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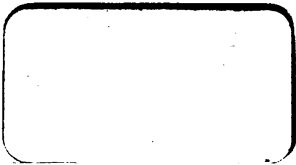
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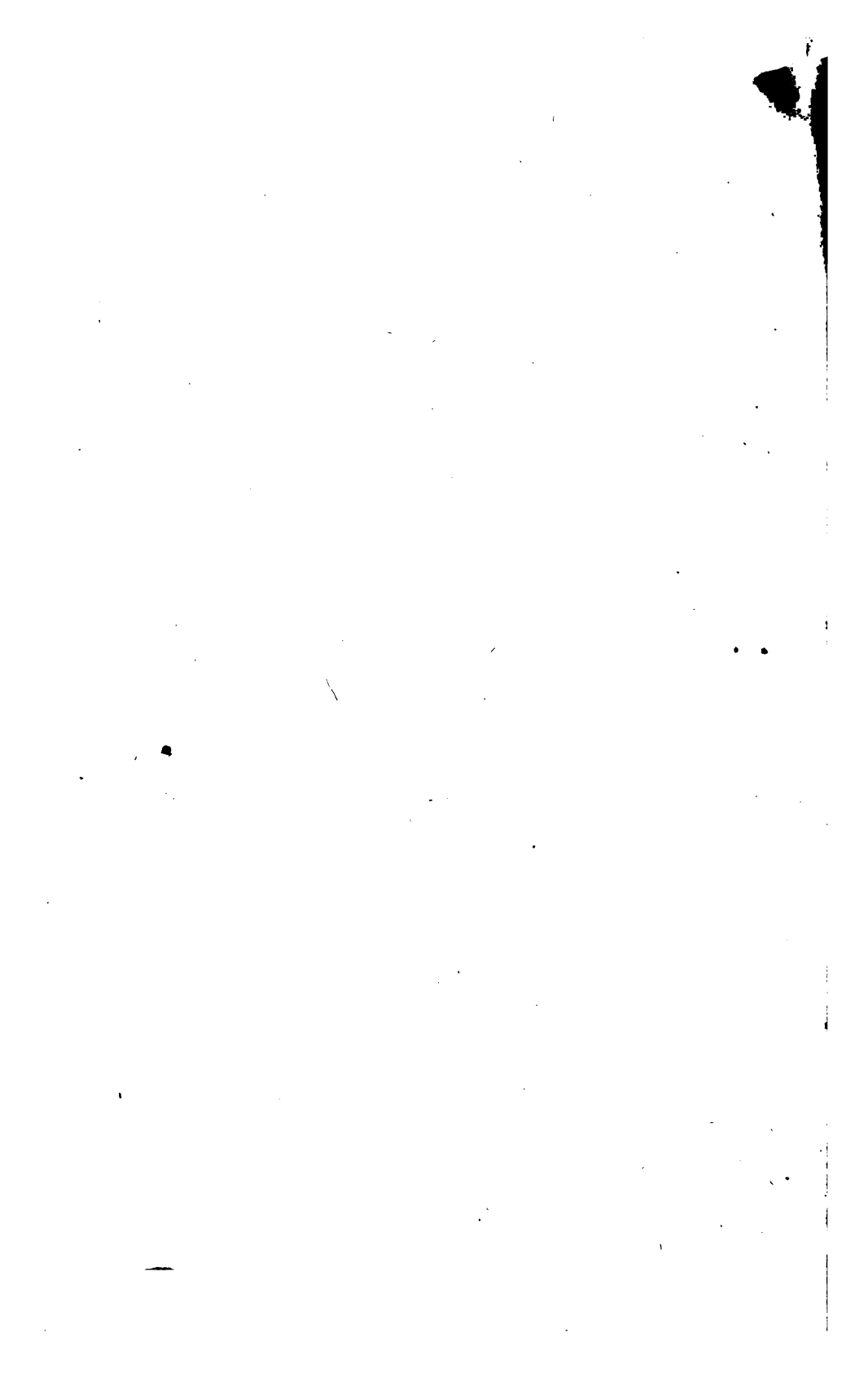


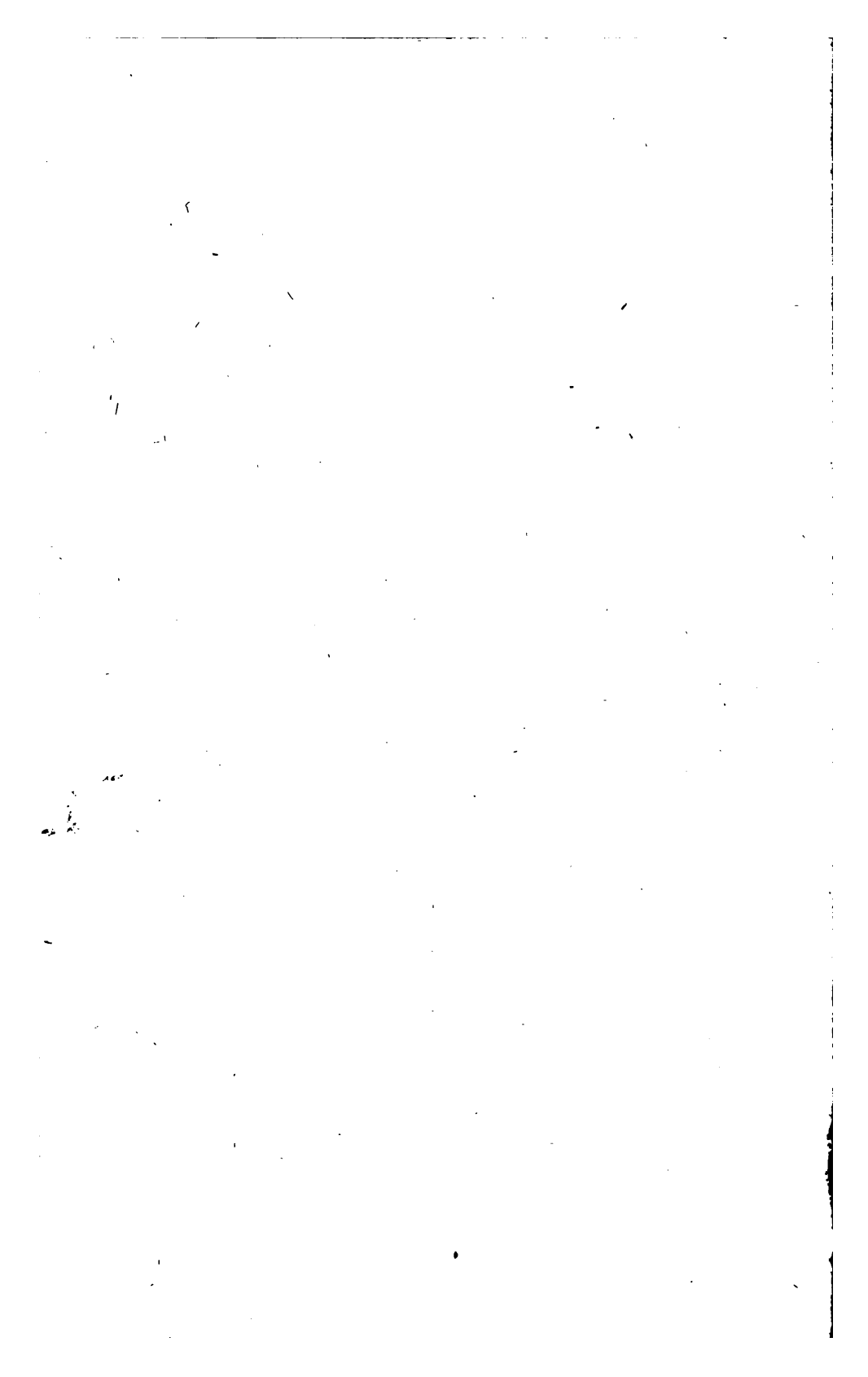






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THE
OFFICE OF SURROGATE,
AND
EXECUTORS' AND ADMINISTRATORS'
GUIDE:
CONTAINING THE WHOLE
ECCLESIASTICAL LAW,
1 Jan 2 1880
PRACTICE OF THE STATE OF NEW-YORK.

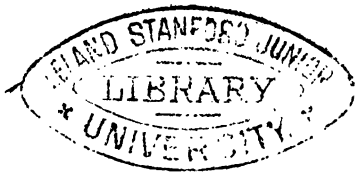
—ALSO—
AN ENTIRE NEW SET OF FORMS, ADAPTED TO ALL CASES OF PRACTICE IN THE
SURROGATE COURTS,
TO BE USED BY THE
SURROGATE, ATTORNEY, EXECUTORS, ADMINISTRATORS, GUARDIANS
AND
IN APPLICATION FOR DOWER.)

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**BY T. ATTWOOD BRIDGEN,**  
SURROGATE OF ALBANY.  
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—O—
1880.



A15761

Northern District of New-York, ss.



BE IT REMEMBERED, That on the 8th day of December, in the 54th year of the Independence of the United States of America, A. D. 1829, T. ATTWOOD BRIDGEN, of the said district, hath deposited in this office, the title of a book, the right whereof he claims as author, in the words following, to wit :

"The Office of Surrogate, and Executors' and Administrators' Guide: containing the whole Ecclesiastical Law, and Practice of the state of New-York. Also, an entire new set of Forms, adapted to all cases of Practice in the Surrogate courts, to be used by the Surrogate, Attorney, Executors, Administrators, Guardians, and in application for Dower. By T. ATTWOOD BRIDGEN, Surrogate of Albany."

In conformity to the act of the congress of the United States, entitled, "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned." And also to the act, entitled "An act supplementary to an act, entitled an Act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints."

R. R. LANSING, Clerk

Of the District court of the United States for the Northern District of New-York.

PREFACE.

—ooo—

The Legislature of the State of New York has at length settled, by statute, the powers, duties, and jurisdiction of the Surrogate. It is supposed, that there is now no common law to regulate the practice of the Surrogate Court, or the liabilities and responsibilities of Executors and Administrators: all must look into the new revised statutes, for the regulation of their conduct in Ecclesiastical matters.

Much improvement has been made in the system, many new powers given to the Surrogate, the whole law reduced to writing, and no discretion given out of the written law.

Time alone will determine the wisdom of the measure; and, although the author of the following treatise has the fullest confidence in its general

utility, still, believing that *uniformity of practice in the fifty Courts*, will prove the great lever which must raise the Colossus of the Revisers to its appropriate and merited station among the improvements of the age and insure its perpetuity, he appears, once more, before the public with his offering of assistance.

The rapid sale and extensive circulation of his last work, with all its imperfections, have convinced him of the actual wants of the community, and have spurred him to another effort, more worthy (as he hopes) of patronage, and not less acceptable to the public.

The author does not claim the peculiar merit of originality for his labors ; but is urged by gratitude for the many kind wishes and solicitations of his professional brethren, and particularly the Surrogates, and the acknowledged wants of the community, to submit for their inspection and adoption, (if deemed worthy) this second edition of his Office of Surrogate.

PART I.



ARTICLE 1.

Of the general powers and duties of the SURROGATE.

THE surrogate in the state of New-York is the officer to whom is deputed the jurisdiction of wills and testaments, and the control and disposition of the estates of persons dying intestate. This officer is possessed of like powers with the ordinary in England—the judge of probates in New-England, and the orphan courts in other states. The surrogate appoints and removes guardians, and directs and controls their conduct and accounts, and has power of assigning dower. One surrogate is appointed for each county, by the senate, upon the recommendation of the governor, and must give bond and be sworn as directed by statute.

A brief history of the origin of this officer, and the powers from time to time vested in him, may be found in a former treatise on this subject. All common law jurisdiction is now taken from him, and he must exercise his powers “in the cases, and in the manner prescribed by the statutes of this state”, and cannot, “under pretext of incidental power or constructive authority, exercise any jurisdiction whatever not expressly given by some statute of this state”—ch. 2. tit. 1. s. 1. He must hold a court within the limits of his county, which must be at all times open, and particularly on Monday of each week: it is his duty to attend at his office to exercise the powers and duties conferred on him.—ib. s. 2.

The present seals of the several surrogates will continue to remain the seals of their courts, with power to destroy when injured, and to procure similar ones in the manner directed by law.

The surrogate has power:

1st. To take the proof of wills of real and personal estates; to take the proof of any will relating to real estate, situated within the county of such surrogate, when the testator in such will shall have died out of this state, not being an inhabitant thereof, and not leaving any assets therein.

2. To grant letters testamentary and of administration.

3. To direct and control the conduct, and settle the accounts of executors and administrators.

4. To enforce the payment of debts and legacies, and the distribution of estates of intestates.

5. To order the sale and disposition of the real estates of deceased persons.

6. To administer justice in all matters relating to the affairs of deceased persons, according to the provisions of the statutes of this state.

7. To appoint guardians to minors, to remove them, to direct and control their conduct, and to settle their accounts, as prescribed by law.

8. To cause the admeasurement of dower to widows.—ch. 2. tit. 1. sec. 1, 6, 7.

The surrogate must file all papers belonging to his court, and may enforce the service of all process issued out of his court, and award *costs* in his discretion. Jurisdiction once acquired by a surrogate in any matter becomes exclusive, over the same matter and all its incidents, of all other surrogates. The exceptions to this rule will be stated in their appropriate places in this treatise.

No surrogate can be counsel, solicitor or attorney, for or against any executor, administrator, guardian or minor, in any civil action, over whom or whose accounts he could have any jurisdiction by law.—ch. 2. tit. 1. sec. 8, 9, 10, 12, 13.

ARTICLE II.

Of the duties of the Surrogate in particular cases, and his proceedings in each case.

1st. In proving wills:—

It is proper to mention, that what the author predicted has now been accomplished, and all wills are placed upon the same basis. Every last will and testament of real or personal property, or both, shall be executed and attested in the following manner:

1. It shall be subscribed by the testator at the end of the will.

2. Such subscription shall be made by the testator, in the presence of each of the attesting witnesses, or shall be acknowledged by him, to have been so made, to each of the attesting witnesses.

3. The testator, at the time of making such subscription, or at the time of acknowledging the same, shall declare the instrument so subscribed, to be his last will and testament.

4. There shall be at least two attesting witnesses, each of whom shall sign his name as a witness, at the end of the will, at the request of the testator.

5. The witnesses to any will, shall write opposite to their names their respective places of residence; and every person who shall sign the testator's name to any will, by his direction, shall write his own name as a witness to the will. A neglect to comply with either of these provisions, subjects the author of the omission to a penalty of fifty dollars, to any devisee or legatee who will sue for it.—But the omission does not invalidate the will, nor render the witness incompetent.—ch. 6. tit. 1. sec. 40, 41.

The term "will", as used in this treatise, includes all codicils as well as wills.

If a testator devises in express terms *all his real estate*, or in any other terms denoting *his intention* to devise all his re-

al estate, his will shall be construed to pass all the real estate of which he may be seized, and entitled to devise, at the time of his death, This is an alteration of the common law.—ib. tit. 1. sec. 5.

A devise to an alien is void. The interest devised descends to the heirs (if any), or in default of legal heirs, to residuary devisees; if no residuary devisees, it escheats.—ib. s. 4.

Wills of REAL ESTATE may be proved before the surrogate in the manner which will be noticed in the second part of this work. It is sufficient to state in this place, that such wills must be proved upon notice to be given by the person applying for probate, and that if any of the heirs are minors, and have no guardians, the surrogate shall appoint guardians to take care of their interests in the proceedings to probate.—Witnesses may be subpoenaed, and persons required to produce wills in their possession, who may be punished for disobedience. Any person committed for not producing a will, may, by an order to be entered for that purpose by the surrogate, be discharged, on producing the same to the surrogate.

Upon proof being made of the due service of the notice of such application, the surrogate shall cause the witnesses to be examined before him. All such proofs and examinations shall be reduced to writing. All the witnesses to such will who are living in this state, and of sound mind, shall be produced and examined; and the death, absence, or insanity of any of them, shall be satisfactorily shown to the surrogate taking such proof.

When any one or more of the subscribing witnesses to such will shall be examined, and the other witnesses are dead, or reside out of the state, or are insane, then such proof shall be taken of the handwriting of the testator, and of the witness or witnesses so dead, absent, or insane, and of such other circumstances, as would be sufficient to prove such will, on a trial at law.

If it shall appear upon the proof taken, that such will was duly executed; that the testator, at the time of executing the

same, was in all respects competent to devise real estate, and not under restraint, the said will and the proofs and examinations so taken, shall be recorded in a book to be provided by the surrogate; and the record thereof shall be signed and certified by him.

Every will so proved, shall have a certificate of such proof indorsed thereon, signed by the surrogate and attested by his seal of office, and may be read in evidence without further proof thereof. The record of such will, made as aforesaid, and the exemplification of such record, by the surrogate in whose custody the same may be, shall be received in evidence, and shall be as effectual in all cases, as the original will would be, if produced and proved, and may, in like manner, be repealed by contrary proof.

If it shall appear to the satisfaction of the surrogate, that all the subscribing witnesses to any such will are dead, insane or reside out of the state, the surrogate shall take and receive such proof of the handwriting of the testator, and of either or all the subscribing witnesses to the will, and of such other facts and circumstances, as would be proper to prove such will, on a trial at law.

The proofs and examinations taken as aforesaid, shall be signed, certified and recorded by the surrogate as herein before provided, and the will shall be deposited with him.

The witnesses shall have the like fees for their attendance, on proving a will, as are allowed for similar services in personal actions, to be paid by the person applying to have such will proved.

In case probate of a will as last mentioned where the witnesses are dead, insane, or reside out of the state, the records of the proof and examinations taken by the surrogate, and the exemplification of such records, shall be received as evidence upon any trial concerning the same will, after it shall have been proved that the lands in question have been uninterruptedly held under such will, for twenty years before the

commencement of the suit, with the like effect as if taken in open court.

Wills of **PERSONAL PROPERTY** may be made by male persons of the age of eighteen years or upwards, and by females of the age of sixteen years or upwards, who are not married. Nuncupative wills are abolished, except made by a soldier in actual service, or a mariner at sea.

The surrogate of each county shall have sole and exclusive power, within the county for which he may be appointed, to take the proof of last wills and testaments, so far as the same relate to personal property, of all deceased persons, in the following cases :

1. Where the testator at, or immediately previous to his death, was an inhabitant of the county of such surrogate, in whatever place such death may have happened.

2. Where the testator, not being an inhabitant of this state, shall die in the county of such surrogate, leaving assets therein.

3. Where the testator, not being an inhabitant of this state, shall die out of the state, leaving assets in the county of such surrogate.

4. Where a testator, not being an inhabitant of this state, shall die out of the state, not leaving assets therein, but assets of such testator shall thereafter come into the county of such surrogate.

No will of personal estate, either written or unwritten, shall be admitted to proof, nor shall letters testamentary or of administration thereon be granted, until the widow and next of kin shall have been cited to appear and attend such probate. Such citation shall be personally served on them, if they be in the county, six days at least before the return thereof; and if not in the county, and whenever personal service is not made on the next of kin, by publishing the same at least two weeks, in such newspaper in the state, as the surrogate shall deem most likely to give notice to the relations of the deceased,

On the application of any person interested, the surrogate

shall issue a citation under his seal of office, to any person having the custody or possession of any will, requiring him to produce the same, at such time and place as such surrogate shall deem reasonable, to the intent that such will may be duly proved. Any person who, without reasonable cause, shall neglect or refuse to produce any will, in obedience to such citation, shall be committed to the jail of the county, by an order under the hand and seal of the surrogate, there to remain until he shall produce such will.

Written wills of personal estate offered for probate, shall be proved by one or more of the subscribing witnesses, or if they be dead, insane, or out of the state, then by proof of the handwriting of the testator and of the subscribing witnesses; and in all cases the oath of the person who received the same of the testator, if he can be produced, together with the oath of the person presenting the same for probate, stating the circumstances of the execution, the delivery and the possession thereof, shall be required. The surrogate shall enquire particularly into the facts and circumstances, and shall be satisfied of the genuineness and validity of such will, before admitting the same to probate, or granting letters testamentary or of administration thereon.

Every surrogate shall indorse on every will proved before him, a certificate that the same has been admitted to probate by him, stating therein the day when such probate was granted.

When any will of personal property shall have been proved before any surrogate having jurisdiction, the jurisdiction over the executors, and the power of granting letters testamentary and of administration with the will annexed, with all powers incidental thereto, shall be exercised exclusively by the surrogate who first took the proof of such will; and no other surrogate shall have power to grant letters of administration upon the estate of such testator.

The probate of any will of personal property, taken by a surrogate having jurisdiction, shall be conclusive evidence of the validity of such will, until such probate be reversed on

appeal, or revoked by the surrogate, as herein stated, or the will be declared void by a competent tribunal.

Notwithstanding a will of personal property may have been admitted to probate, any of the next of kin to the testator, may, at any time within one year after such probate, contest the same, or the validity of such will.

For that purpose, such relative shall file in the office of the surrogate by whom the will was proved, his allegations in writing, against the validity of such will, or against the competency of the proof thereof.

Upon the filing of such allegations, the surrogate shall issue a citation to the executors, who shall have taken upon themselves the execution of such will, or to the administrators with such will annexed, and to all the legatees named in such will, residing in this state, or to their guardians, if any of them be minors, or their personal representatives, if any of them be dead, requiring them to appear before him on some day to be therein specified, not less than thirty and not more than sixty days from the date thereof, at his office, to shew cause why the probate of such will should not be revoked.

After the service of the citation, such executor or administrator shall suspend all proceedings in relation to the estate of the testator, except the collection and recovery of monies, and the payment of debts, until a decision shall be had on such allegations.

At the time appointed for showing cause, and at such other times thereafter as the surrogate may appoint, upon due proof being made of the personal service of such citation, upon every person named therein, at least fourteen days before the time appointed for showing cause, the surrogate shall proceed to hear the proofs of the parties. If any legatees named in the will so contested, shall be minors, and have no guardians, he shall appoint guardians to take care of their interests in the controversy.

If upon hearing the proofs of the parties, the surrogate shall decide that such will is for any reason invalid, or that it is not sufficiently proved to have been the last will and testament of

the testator, he shall annul and revoke the probate thereof; if otherwise, he shall confirm such probate. Appeals from such decisions may be made in the same manner, and within the same time, and with like effect, as in cases of granting letters of administration.

Upon any such hearing before the surrogate, the depositions of witnesses taken on the first proof of the will, who may be dead, insane, or out of the state, may be received in evidence.

Whenever any surrogate shall annul and revoke the probate of any will of personal property, he shall enter such revocation in his records, and attest the same; and shall cause notice thereof to be immediately served on the executors therein named, or upon the administrators with such will annexed, and to be published for three weeks in a newspaper printed in his county, if there be one, the expense of which publication shall be taxed as a part of the costs of the proceedings.

Upon such notice being served upon such executor or administrator, his powers and authority shall cease, and he shall account to the representatives of the deceased person, whose alleged will was contested, for all monies and effects received; but such executor or administrator shall not be liable for any act done in good faith, previous to the service of the citation, nor for any act so done in the collection of monies, or the payment of debts, after the service of the citation, and previous to the service of the notice of revocation.

The surrogate's fees and expenses shall be paid by the party contesting the validity of the will, or the probate thereof, in case such will or probate be confirmed; and in case such probate be revoked, the party who shall have resisted such revocation, may be required, by the surrogate, to pay the costs and the expenses of the proceedings, either personally or out of the property of the deceased. In all cases, such payment may be enforced by process of attachment.

2nd. The duties of the Surrogate in granting letters testamentary:—

When any will of personal estate shall have been duly admitted to probate, the surrogate who took such proof, shall issue letters testamentary thereon, to the persons named therein as executors, who are competent by law, to serve as such, and who shall appear and qualify.

No letters testamentary shall be granted, until the expiration of thirty days after the will shall have been proved, during which time any relative or creditor of the deceased, or any other person interested in his estate, may file objections with the surrogate, to the granting of letters testamentary, to any one or more of the persons, named in such will as executors.

No person shall be deemed competent to serve as an executor, who, at the time the will is proved, shall be,

1. Incapable in law of making a contract, (except married women):

2. Under the age of twenty-one years:

3. An alien who has not taken the preliminary measures to entitle him to naturalization:

4. Who shall have been convicted of an infamous crime:

5. Who upon proof shall be adjudged incompetent by the surrogate to execute the duties of such trust, by reason of drunkenness, improvidence, or want of understanding.

If any such person be named as the sole executor in any will, or if all the persons named therein as executors, be incompetent, letters of administration, with the will annexed, shall be issued, as hereinafter is stated, in the case of all the executors renouncing.

No married woman shall be entitled to letters testamentary, unless her husband consent thereto in writing, to be filed with the surrogate; and by giving such consent he shall be deemed responsible for her acts jointly with her.

If the disability of a person under age, or being an alien, or a married woman, named as executor in any will, shall be removed, before the execution of such will is completed, such

person shall be entitled on application, to supplementary letters testamentary, to be issued in the same manner as the original letters, and shall thereupon be authorised to join in the execution of such will, with the persons previously appointed.

If objections be made by any creditor of the testator, or any legatee, relative, or other person interested in his estate, against granting letters testamentary, to one or more of the persons named in the will as executors, the surrogate shall inquire into such objections; and if it appear that the circumstances of any person named as such executor, are such, that in the opinion of the surrogate they would not afford adequate security to the creditors, legatees and relatives of the deceased, for the due administration of the estate, he may refuse letters testamentary to any such person, until he shall give the like bond as is required by law, of administrators in cases of intestacy.

If any person applying for letters testamentary, shall be a non-resident of the state, such letters shall not be granted until the applicant shall give the like bond.

Any person named as executor in a will, may renounce such appointment, by an instrument in writing under his hand, attested by two witnesses, and on the same being proved to the satisfaction of the surrogate, who took proof of the will, it shall be filed and recorded by him.

If any person named as executor, shall not appear to qualify, and take upon himself the execution of a will, at the time the same is proved, and shall not have renounced, the surrogate shall, on application of any other executor, or of the widow, or any of the next of kin, or any legatee, or creditor of the testator, issue a summons directed to such executor, requiring him to appear and qualify, within a certain time therein to be limited, or that, in default thereof, he will be deemed to have renounced the said appointment.

If the person to whom such summons is directed, reside within this state, it shall be served personally on him, at least fourteen days before the time limited therein for him to appear. And if he reside, or be, out of the state, or his resi-

any person named in a will as executor, and not named in the letters testamentary, or in letters of administration with the will annexed, shall be deemed to be superseded and shall have no power or authority whatever, as until he shall appear and qualify.

Any person named in a will, shall, before letters testamentary are granted, have any power to dispose of any part of the estate of the testator, except to pay funeral charges, or to interfere with such estate in any manner, further than is necessary for its preservation.

No executor of an executor, shall, as such, be authorised to administer on the estate of the first testator; but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, of the assets of the first testator left unadministered, shall be issued in the manner and with the authority herein after mentioned.

If after letters testamentary shall have been granted to any person, named as executor, in any will, complaint shall be made to the surrogate of the county in which such letters were granted, by any person interested in the estate of the deceased, that the person so appointed executor has become incompetent by law to serve as such, or that his circumstances are so precarious as not to afford adequate security for his due administration of the estate, or that he has removed, or is about to remove, from this state, the surrogate shall proceed to enquire into such complaint.

Such surrogate shall thereupon issue a citation to the person complained of, requiring him to appear before such surrogate, at a day and place therein to be specified, to show cause why he should not be superseded; which citation shall be personally served on the person to whom it may be directed, at least six days before the return thereof, if he be in the county; and if he shall have absconded from such county, it may be served by leaving it at his place of residence.

Upon due proof of the service of such citation, the surrogate shall proceed at the day appointed, or on such other day as he shall appoint, to hear the proofs and allegations of the

parties ; and if it appear that the circumstances of the person so appointed, are precarious as aforesaid, or that such person has removed, or is about to remove, from this state, he shall require such person to give bond with sureties, like those required by law of administrators, within a reasonable time, not exceeding five days.

If such person neglect to give such bond, or if it appear that he is legally incompetent to serve as executor, the surrogate shall by order supersede the letters testamentary so issued to such person, whose authority and rights as an executor shall thereupon cease ; and if there be no acting executor of such will, the surrogate shall grant letters of administration with the will annexed, of the assets of the deceased left unadministered.

In all cases where letters of administration with the will annexed, shall be granted, the will of the deceased shall be observed and performed ; and the administrators with such will, shall have the rights and powers, and be subject to the same duties, as if they had been named executors in such will.

3rd. The duties of the Surrogate in granting letters of administration:—

The surrogate of each county shall have sole and exclusive power, within the county for which he may be appointed, to grant letters of administration of the goods, chattels, and credits of persons dying intestate, in the following cases :

1. Where an intestate, at or immediately previous to his death, was an inhabitant of the county of such surrogate, in whatever place such death may have happened.

2. Where an intestate, not being an inhabitant of this state, shall die in the county of such surrogate, leaving assets therein.

3. Where an intestate, not being an inhabitant of this state, shall die out of the state, leaving assets in the county of such surrogate, and in no other county.

4. Where an intestate, not being an inhabitant of this state, shall die out of the state, not leaving assets therein, but

assets of such intestate shall thereafter come into the county of such surrogate.

Whenever an intestate, not being an inhabitant of this state, shall die out of the state, leaving assets in several counties, or assets of such intestate shall after his death come into several counties, the surrogate of any county in which such assets shall be, shall have power to grant letters of administration on the estate of such intestate; but the surrogate, who shall first grant letters of administration on such estate, shall be deemed thereby, to have acquired sole and exclusive jurisdiction over such estate, and shall be vested with all the powers incidental thereto.

The persons appointed administrators, by the surrogate who shall have first granted letters of administration, in the cases above specified, shall have sole and exclusive authority as such, and shall be entitled to demand and recover from every person subsequently appointed administrator of the same estate, the assets of the deceased in his hands. But all acts in good faith, of such subsequent administrator, done before notice of such previous letters, shall be valid; and all the suits commenced by him, may be continued by, and in the name of, the first administrators.

Before any letters of administration shall be granted on the estate of any person who shall have died intestate, the fact of such person's dying intestate shall be proved to the satisfaction of the surrogate; who shall examine the persons applying for such letters, on oath, touching the time, place, and manner of the death, and whether or not the party dying left any will; and he may also in like manner examine any other person, and may compel such person to attend as a witness for that purpose.

Administration, in case of intestacy, shall be granted to the relatives of the deceased, who would be entitled to succeed to his personal estate, if they or any of them will accept the same, in the following order: First, to the widow; second, to the children; third, to the father; fourth, to the brothers; fifth, to the sisters; sixth, to the grandchildren; seventh,

to any other of the next of kin who would be entitled to share in the distribution of the estate. If any of the persons so entitled be minors, administration shall be granted to their guardians; if none of the said relatives or guardians will accept the same, then to the creditors of the deceased; and the creditor first applying, if otherwise competent, shall be entitled to a preference; if no creditor apply, then to any other person or persons legally competent; but in the city of New-York, the public administrator shall have preference after the next of kin, over creditors and all other persons; and in the other counties of this state, the county treasurer shall have preference next after creditors, over all other persons. And in the case of a married woman dying intestate, her husband shall be entitled to administration, in preference to any other person, as is by law provided.

When there shall be several persons of the same degree of kindred to the intestate, entitled to administration, they shall be preferred in the following order: First, males to females; second, relatives of the whole blood to those of the half blood; third, unmarried women to such as are married; and when there are several persons equally entitled to administration, the surrogate may, in his discretion, grant letters to one or more of such persons.

A husband, as such, if otherwise competent according to law, shall be solely entitled to administration on the estate of his wife, and shall give bond as other persons, but shall be liable as administrator, for the debts of his wife, only, to the extent of the assets received by him. If he shall not take out letters of administration on her estate, he shall be presumed to have assets in his hands, sufficient to satisfy her debts, and shall be liable therefor; and if he shall die, leaving any assets of his wife unadministered, they shall pass to his executors or administrators, as part of his personal estate, but shall be liable for her debts to her creditors, in preference to the creditors of the husband.

If letters of administration on the estate of a married woman, shall be granted to any other person than her husband,

by reason of his neglect, refusal, or incompetency to take the same, such administrator shall account for, and pay over, the assets remaining in his hands, after the payment of debts, to such husband, or his personal representatives.

In all cases where persons, not inhabitants of this state, shall die, leaving assets in this state, if no application for letters of administration be made by a relative entitled thereto, and legally competent, and it shall appear that letters of administration on the same estate, or letters testamentary, have been granted by competent authority, in any other state of the United States, then the person so appointed, on producing such letters, shall be entitled to letters of administration in preference to creditors, or any other persons, except the public administrator in the city of New-York.

No letters of administration shall be granted to a person convicted of an infamous crime, nor to any one incapable by law of making a contract, nor to a person who is not a citizen of the United States, nor to any one who is under twenty-one years of age, nor to any person, who shall be judged incompetent by the surrogate, to execute the duties of such trust, by reason of drunkenness, improvidence, or want of understanding, nor to any married woman; but where a married woman is entitled to administration, the same may be granted to her husband in her right and behalf.

If any person who would otherwise be entitled to letters of administration as next of kin, or to letters of administration with the will annexed, as residuary or specific legatee, shall be a minor, such letters shall be granted to his guardian, being in all respects competent, in preference to creditors or other persons.

Administration may be granted to one or more competent persons, although not entitled to the same, with the consent of the person entitled, to be joined with such person; which consent shall be in writing, and be filed in the office of the surrogate.

When any person shall apply for administration, either with the will annexed, or in case of intestacy, and there shall

be any other person having prior right to such administration, the applicant shall produce, prove, and file with the surrogate, a written renunciation of the persons having such prior right. If he fail to do so, before any such letters shall be granted, a citation shall be issued to all persons having such prior right, to show cause at a day to be therein specified, why administration should not be granted to such applicant.

If any person to whom such citation shall be directed, shall reside within the county of such surrogate, such citation shall be served personally, or by leaving a copy at the residence of such person, at least six days before the return day thereof; if any such person reside out of such county, but within the state, and such residence can be ascertained, service shall be made in the same manner, at least forty days before the return day of the citation: if any such person reside out of the state, or his residence cannot be ascertained, such citation may be personally served without the state, forty days before its return, or may be published once in each week, for six weeks successively, in the state paper.

In all cases of application for letters of administration in cases of intestacy, a citation to show cause as aforesaid, shall be issued to, and served on, the attorney-general, at least twenty days before the return day thereof, previous to granting such letters, unless it shall be shown to the surrogate, by the affidavit of the applicant, or other written proof, that the intestate left kindred entitled to his estate, specifying the names of such kindred, and their places of residence, as far as the same can be ascertained.

In case of a contest relative to the proof of a will, or relative to the right to letters testamentary, or when by reason of the absence from this state of any executor named in a will, or by any other cause, a delay is necessarily produced, in granting such letters, the surrogate authorised to grant the same may, in his discretion, issue special letters of administration to one or more persons, authorising the collection and preservation of the goods of the deceased.

Every collector so appointed, shall have authority to col-

lect the goods, chattels, personal estate, and debts of the deceased; and to secure the same, at such reasonable expense as the surrogate shall allow; and for those purposes may maintain suits as an administrator. Under the direction of the surrogate, he may sell such of the said goods as shall be perishable, after the same shall have been appraised.

Upon letters testamentary, or of administration, being granted, the power and authority of such collector shall cease; but any suit brought by him may be continued by the executor or administrator, in the name of such collector, but which he shall not have power to discontinue or release. And such collector shall, on demand, deliver to the executor or administrator, all the property and money of the deceased in his hands, and shall render an account, on oath, to the surrogate, of all his proceedings, upon being cited for that purpose, or without such citation. Such delivery and account may be enforced by an order of the surrogate, and by attachment to be issued by him, as in other cases of administrators.

Before any letters of administration with the will annexed, or in cases of intestacy, shall be issued to any administrator or collector, he shall take and subscribe an oath or affirmation before the surrogate, or in case of sickness or other inability to attend the surrogate, before any officer authorised to administer oaths, that he will well, honestly and faithfully, discharge the duty of administrator or collector, as the case may be, according to law.

Every person appointed administrator shall, before receiving letters, execute a bond to the people of this state, with two or more competent sureties, to be approved by the surrogate, and to be jointly and severally bound. The penalty in such bond shall not be less than twice the value of the personal estate of which the deceased died possessed, which value shall be ascertained by the surrogate, by the examination on oath of the party applying, and of every other person he may think proper to examine. The bond shall be conditioned, that such administrator shall faithfully execute the trust reposed in him as such, and also that he shall obey all orders

of such surrogate, touching the administration of the estate committed to him.

Every collector appointed by special letters, shall execute a bond, with sureties, to be approved as aforesaid, in the same penalty as in the case of an administrator, and the same proceedings shall be had to ascertain such penalty. The condition of such bond shall be, that he will make a true and perfect inventory of such of the assets of the deceased, as shall come to his possession or knowledge, and return the same, within three months, to the office of the surrogate granting such letters; that he will faithfully and truly account for all property, money, and things in action, received by him as such collector, whenever required by the said surrogate, or any other court of competent authority, and will faithfully deliver up the same, to the person or persons who shall be appointed executors or administrators of the deceased, or to such other person as shall be authorised to receive the same by such surrogate.

In case any one of several executors or administrators, to whom letters testamentary or of administration shall have been granted, shall die, become lunatic, convict of an infamous offence, or otherwise become incapable of executing the trust reposed in him, or in case the letters testamentary or of administration shall be revoked or annulled according to law, with respect to any one executor or administrator, then the remaining executors and administrators shall proceed and complete the execution of the will or the administration, according to law.

If all such executors or administrators shall die, or become incapable, as aforesaid, or the power and authority of all of them shall be revoked according to law, the surrogate having authority to grant letters originally, shall issue letters of administration upon the goods, chattels, credits and effects of the deceased left unadministered, with the will annexed, or otherwise, as the case may be; to the widow or next of kin, or creditors of the deceased, or others, in the same manner as herein before directed, in relation to original letters of admin-

istration; which administrator shall give bonds in the like penalty, with like sureties and conditions, as herein before required of administrators, and shall have the like power and authority. And such letters shall supersede all former and other letters testamentary, and of administration, upon the same estate.

If after granting any letters of administration on the ground of intestacy, any will shall be subsequently proved, and letters testamentary or of administration, with the will annexed, be thereupon issued, a revocation of such letters of administration shall be made by the surrogate; and until the same be made and served on such administrator, his acts done in good faith shall be valid; and the executors to whom letters testamentary shall be issued, shall be entitled to demand, collect, and sue for, the goods, chattels, and effects remaining unadministered.

All sales made in good faith, and all lawful acts done, either by administrators before notice of a will, or by executors or administrators, who may be removed or superseded, or who may become incapable, shall remain valid, and shall not be impeached, on any will afterwards appearing, or by any subsequent revocation or superseding of the authority of such executors or administrators.

No surrogate shall admit to probate any will, or grant letters testamentary or of administration, in any case, or upon any estate, where he shall be interested as next of kin to the deceased, or as a legatee or devisee under such will, or where such surrogate shall be named as executor in such will.

All letters testamentary, letters of administration, and letters appointing any collector, shall be issued in the name of the people of this state, and shall be tested in the name of the surrogate, or other officer granting the same, and shall be signed by him, and sealed with the seal of his office.

The testimony taken by any surrogate, in relation to the proof of any written or unwritten will, and in any controversy relating to the granting of letters testamentary or of administration, or the revoking of the same, shall be reduced to

writing, and shall be entered by him, in a proper book to be provided and preserved as part of the books of his office.

Each surrogate shall record in his books, to be provided by him, all wills proved before him, and all letters testamentary or of administration, and all letters appointing a collector, with all things concerning the same. The records of such wills and letters, and the transcripts thereof duly certified by the surrogate, having the custody of such records, under his seal of office, shall be evidence in all courts, so far as respects any personal estate, in the same manner as if the originals were produced and proved.

The surrogate before whom any will of a person, not being an inhabitant of this state at the time of his death, shall be proved, or who shall grant letters of administration on the estate of any person, who at his death was not an inhabitant of this state, shall, within ten days after admitting such will to probate, or granting such letters, transmit a certified copy thereof to the secretary of state, to be filed in his office, the expense whereof shall be paid out of the treasury, on the warrant of the comptroller, upon producing the certificate of the secretary of state, of the receipt of such copy.

4th. Of the duties of the Surrogate, as they relate to the inventory and settling the accounts of executors and administrators:—

The surrogate appoints, by writing, the appraisers—ch. 6. tit. 3. sec. 1.—and upon the return thereof, administers an oath to the executor or administrator, to be endorsed on, or annexed to the inventory.—ib. sec. 16.

If the inventory is not returned within three months, or within such further time, not exceeding four months, as the surrogate may allow, summons is to be issued by the surrogate, requiring the return of the inventory; and if the executor or administrator shall be in default, attachment issues.

If after personal service of such summons, such executor or administrator shall not, by the day appointed, return such inventory on oath, or obtain further time to return the same,

the surrogate shall issue an attachment against him, and commit him to the common jail of the county, there to remain until he shall return such inventory.

If such summons cannot be served personally, by reason of such executor or administrator absconding or concealing himself, or, if after being committed to prison, such executor or administrator shall neglect for thirty days, to make and return such inventory, the surrogate may thereupon issue under his seal of office, a revocation of the letters testamentary or letters of administration, before granted to such executor or administrator; reciting therein the cause of such revocation, and shall grant letters of administration of the goods, chattels and effects of the deceased, unadministered, to the person entitled thereto, (other than such executor or administrator,) in the same manner as original letters of administration, or letters testamentary.

Such letters of administration or letters testamentary, shall supersede all former letters, and shall deprive the former executor or administrator of all power, authority, and control, over the personal estate of the deceased; and shall entitle the person appointed by such letters, to take, demand, and receive the goods and effects of the deceased, wherever the same may be found.

Every executor or administrator committed to prison as aforesaid, may be discharged by the surrogate, or a justice of the supreme court, or a circuit judge, on his delivering upon oath, all the property of the deceased under his control, to such person as shall be authorised by the surrogate to receive the same.

Executors and administrators are guarded on every side by the new enactments of the legislature, and the surrogate's powers over every step of their progress to a settlement of the estates entrusted to them, renders the execution of their trusts safe and expeditious.

No execution shall issue upon a judgment against an executor or administrator, until an account of his administration shall have been rendered and settled, or unless on an order of the

surrogate who appointed him. And if an account has been rendered to the surrogate by such executor or administrator, execution shall issue only for the sum that shall have appeared on the settlement of such account, to have been a just proportion of the assets applicable to the judgment.

No part of the property of the deceased shall be retained by an executor or administrator, in satisfaction of his own debt or claim, until it shall have been proved to, and allowed by, the surrogate; and such debt or claim shall not be entitled to any preference over others of the same class.

In case legacies are not paid at the time and in the manner prescribed by law, the surrogate enforces payment by summons and attachment, and may direct a suit on the bond of the executor or administrator.

In case any legatee is a minor, his legacy, if under the value of fifty dollars, may be paid to his father, to the use and for the benefit of such minor.

If the legacy be of the value of fifty dollars or more, the same may, under the direction of the surrogate, be paid to the general guardian of a minor; who shall be required to give security to the minor, to be approved by the surrogate, for the faithful application and accounting for such legacy.

If there be no such guardian, or the surrogate do not direct such payment, the legacy shall be invested in permanent securities, under the direction of the surrogate, in the name and for the benefit of such minor, upon annual interest; and the interest may be applied, under the direction of the surrogate, to the support and education of such minor.

It shall be the duty of the surrogate, where there is no guardian of such minor, to keep in his office the securities so taken, and to collect, receive, and apply the interest; and when necessary, to collect the principal, and reinvest the same, and also to reinvest any interest that may not be necessarily expended as aforesaid.

On such minor coming of age, he shall be entitled to receive the securities so taken, and the interest or other monies

that may have been received; and the surrogate and his sureties shall be liable to account for the same.

In case of the death of such minor before coming of age, the said securities and monies shall go to his executors or administrators, to be applied and distributed according to law; and the surrogate and his sureties shall, in like manner, be liable to account to such executor or administrator.

An executor or administrator, after the expiration of eighteen months from the time of his appointment, may be required to render an account of his proceedings, by an order of the surrogate, to be granted upon application from some person having a demand against the personal estate of the deceased, either as creditor, legatee, or next of kin, or of some person in behalf of any minor, having such claim, or without such application.

Obedience to such order may be enforced in the manner herein before directed, to compel the return of an inventory; and in case of disobedience, the same proceedings may be had, to attach the party so disobeying, and to discharge him.—And the like revocation of the letters granted to him, may be made, in case of the party's absconding or concealing himself, so that the order cannot be personally served, or of his neglecting to render an account within thirty days after being committed; and new letters shall be granted with the like effect as in those cases.

On the settlement of an account of an executor or administrator, he may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own oath positively to the fact of payment, specifying when and to whom such payment was made, and if such oath be uncontradicted; but such allowances shall not in the whole, exceed five hundred dollars, for payments in behalf of any one estate.

The surrogate may make allowance to any executor or administrator, for property of the deceased, perished or lost, without the fault of such executor or administrator.

No profit shall be made by executors or administrators, by

the increase, nor shall they sustain any loss, by the decrease, without their fault, of any part of the estate; but they shall account for such increase, and shall be allowed for such decrease, on the settlement of their accounts.

On the settlement of the accounts of executors or administrators, the surrogate shall allow to them for their services, over and above their expenses:

1. For receiving and paying out all sums of money not exceeding one thousand dollars, at the rate of five dollars per cent.

2. For receiving and paying any sums exceeding one thousand dollars, and not amounting to five thousand dollars, at the rate of two dollars and fifty cents per cent.

3. For all sums above five thousand dollars, at the rate of one dollar per cent.

And in all cases such allowance shall be made for their actual and necessary expenses, as shall appear just and reasonable.

Where any provision shall be made by any will, for specific compensation to an executor, the same shall be deemed a full satisfaction for his services, in lieu of the allowance aforesaid, or his share thereof; unless such executor shall, by a written instrument to be filed with the surrogate, renounce all claim to such specific legacy.

If, upon being required by any surrogate to render an account, an executor or administrator desires to have the same finally settled, he may apply to the surrogate for a citation, which the surrogate shall issue, requiring the creditors and next of kin of the deceased, and the legatees, if there be any, to appear before him, on some day therein to be specified, and to attend the settlement of such account.

The citation shall be served personally on all those to whom it shall be directed, living in the county of the surrogate, at least fifteen days before the return thereof; and upon those living out of the county, or who, whose residence, may be unknown, either personally, fifteen days previously, or by publishing the same in a newspaper printed in the county, at

least four weeks before the the return thereof, and in such newspapers printed in any other counties, where any creditors, or other persons interested in the estate of the deceased, may reside, as the surrogate, upon due enquiry into the facts, shall direct.

If there be any such creditors or other persons interested, residing in any other state of the United States, or in either the provinces of Canada, the citation shall be published once in each week for three months, in the state paper, unless such citation be personally served on such creditors, at least forty days before the return thereof; and if there be any such creditors, or other persons interested, residing out of the United States, and out of the provinces of Canada, the citation shall be published as aforesaid for six months.

Any creditors, legatees, or other persons interested in the estate of the deceased as next of kin or otherwise, may attend the settlement of such account, and contest the same; and they, and the executor or administrator, shall have process, to be issued by such surrogate, to compel the attendance of witnesses.

The hearing of the allegations and proofs of the respective parties, may be adjourned, from time to time, as shall be necessary. And the surrogate may appoint one or more auditors to examine the accounts presented to him, and to report thereon, subject to his confirmation; and may make a reasonable allowance to such auditors, not exceeding two dollars per day, to be paid out of the estate of the deceased.

The final settlement of such account, and the allowance thereof, by the surrogate, or upon appeal, shall be deemed conclusive evidence, against all creditors, legatees, next of kin of the deceased, and all persons in any way interested in the estate, upon whom the said citation shall have been served, either personally or by publication, as herein directed, of the following facts, and of no others:

1. That the charges made in such account for monies paid to creditors, to legatees, to the next of kin, and for necessary expenses, are correct.

2. That such executor or administrator has been charged all the interest for monies received by him, and embraced in his account, for which he was legally accountable.

3. That the monies stated in such account, as collected, were all that were collectable, on the debts stated in such account, at the time of the settlement thereof.

4. That the allowances in such account, for the decrease in the value of any assets, and the charges therein for the increase in such value, were correctly made.

The last preceding section shall not extend to any case, where an executor is liable to account to a court of equity, by reason of any trust, expressly created by any last will or testament.

No appeal shall be allowed from the decree of the surrogate, for the final settlement of such account, unless the same shall be entered, within three months, after such decree shall have been recorded.

Whenever the authority of an executor or administrator shall cease, or be revoked or superseded for any reason, he may be cited to account before a surrogate, at the instance of the person succeeding to the administration of the same estate, in like manner, as herein before provided for a creditor.

In every such case the executor or administrator may cite the person succeeding to the administration of the same estate, to attend an account and settlement of his proceedings before the surrogate, by giving such reasonable notice as the surrogate shall direct, and by serving and publishing, in the manner herein before stated, a citation to creditors and others; and such settlement and account shall have the like effect in all respects as in the case of a settlement at the instance of a creditor.

Whenever an account shall be rendered and finally settled, (except under the 69th and 70th sections of art. 3, tit. 3, chap. 6), if it shall appear to the surrogate that any part of the estate remains to be paid or distributed, he shall make a decree for the payment and distribution of what shall so re-

main, to and among the creditors, legatees, widow, and next of kin to the deceased, according to their respective rights; and in such decree shall settle and determine all questions concerning any debt, claim, legacy, bequest, or distributive share; to whom the same shall be payable; and the sum to be paid to each person.

In such order the surrogate may, upon the consent in writing of the parties who shall have appeared, direct the delivery of any personal property, which shall not have been sold, and the assignment of any mortgages, bonds, notes, or other demands, not yet due, among those entitled to payment or distribution, in lieu of so much money, as such property or securities may be worth, to be ascertained by the appraisement and oath of such persons, as the surrogate shall appoint for that purpose.

Every person to whom any such securities may be assigned, may sue and recover upon the same, at his own costs and charges, in the name of the executor or administrator making such assignment, or otherwise, in the same manner as such executor or administrator might have done.

If upon the representation of an executor or administrator, or otherwise, it shall appear to the surrogate, that any claim exists against the estate of the deceased, which is not then due, or upon which a suit is then pending, he shall allow a sum sufficient to satisfy such claim, or the proportion to which it may be entitled, to be retained for the purpose of being applied to the payment of such claim when due, or when recovered, or of being distributed according to law. The sum so retained may be left in the hands of the executor or administrator, or may be directed by the surrogate to be deposited in some safe bank, to be drawn only on the order of the surrogate.

Where the deceased shall have died intestate, the surplus of his personal estate remaining after payment of debts; and where the deceased left a will, the surplus remaining after the payment of debts and legacies, if not bequeathed, shall be

distributed to the widow, children, or next of kin of the deceased, in manner following:

1. One third part thereof to the widow, and all the residue by equal portions among the children, and such persons as legally represent such children, if any of them shall have died before the deceased.

2. If there be no children, nor any legal representatives of them, then one moiety of the whole surplus shall be allotted to the widow, and the other moiety shall be distributed to the next of kin of the deceased, entitled under the provisions of this section.

3. If the deceased leave a widow, and no descendant, parent, brother or sister, nephew or niece, the widow shall be entitled to the whole surplus; but if there be a brother or sister, nephew or niece, and no descendant or parent, the widow shall be entitled to a moiety of the surplus as above provided, and to the whole of the residue where it does not exceed two thousand dollars; if the residue exceed that sum, she shall receive, in addition to her moiety, two thousand dollars; and the remainder shall be distributed to the brothers and sisters, and their representatives.

4. If there be no widow, then the whole surplus shall be distributed equally to and among the children, and such as legally represent them.

5. In case there be no widow, and no children, and no representatives of a child, then the whole surplus shall be distributed to the next of kin, in equal degree to the deceased, and their legal representatives.

6. If the deceased shall leave no children, and no representatives of them, and no father, and shall leave a widow and a mother, the moiety not distributed to the widow shall be distributed in equal shares to his mother, and brothers and sisters, or the representatives of such brothers and sisters; and if there be no widow, the whole surplus shall be distributed in like manner to the mother, and to the brothers and sisters, or the representatives of such brothers and sisters.

7. If the deceased leave a father, and no child or descend-

ant, the father shall take a moiety, if there be a widow, and the whole, if there be no widow.

8. If the deceased leave a mother, and no child, descendant, father, brother, sister, or representatives of a brother or sister, the mother, if there be a widow, shall take a moiety, and the whole, if there be no widow.

9. Where the descendants, or next of kin of the deceased, entitled to share in his estate, shall be all in equal degree to the deceased, their shares shall be equal.

10. When such descendants, or next of kin, shall be of unequal degrees of kindred, the surplus shall be apportioned among those entitled thereto, according to their respective stocks; so that those, who take in their own right, shall receive equal shares, and those who take by representation, shall receive the share to which the parent whom they represent, if living, would have been entitled.

11. No representation shall be admitted among collaterals, after brothers' and sisters' children.

12. Relatives of the half blood, shall take equally with those of the whole blood in the same degree; and the representatives of such relatives, shall take in the same manner as the representatives of the whole blood.

13. Descendants and next of kin of the deceased, begotten before his death, but born thereafter, shall take in the same manner, as if they had been born in the lifetime of the deceased, and had survived him.

If any child of such deceased person shall have been advanced by the deceased, by settlement or portion of real or personal estate, the value thereof shall be reckoned with that part of the surplus of the personal estate, which shall remain to be distributed among the children; and if such advancement be equal or superior to the amount, which, according to the preceding rules, would be distributed to such child, as his share of such surplus and advancement, then such child and his descendants shall be excluded from any share in the distribution of such surplus.

But if such advancement be not equal to such amount,

such child, or his descendants, shall be entitled to receive so much only, as shall be sufficient to make all the shares of all the children, in such surplus and advancement, to be equal, as near as can be estimated.

The maintaining or educating, or the giving of money to a child, without a view to a portion or settlement in life, shall not be deemed an advancement, within the meaning of the two last sections; nor shall those sections apply in any case where there shall be any real estate of the intestate, to descend to his heirs.

The foregoing provisions shall not apply to the personal estates of married women; their husbands may demand, recover and enjoy the same, as they are entitled by the rules of common law.

Where a distributive share is to be paid to a minor, the surrogate may direct the same to be paid to the general guardian of such minor, and to be applied to his support and education; or he may direct the same to be invested in permanent securities, as herein before stated, in respect to legacies to minors, with the like authority to apply the interest, and subject to the same obligations.

When administration is granted to any person not the widow of, or next of kin to, a deceased person, and no one shall appear to claim the personal estate of the deceased within two years after such letters granted, the surplus of such estate which would be distributed as aforesaid, shall be paid into the treasury of this state, for the benefit of those who may thereafter appear to be entitled to the same.

Any person entitled to any legacy, or to a distributive share of the estate of a deceased person, at any time previous to the expiration of one year from the granting of letters testamentary or of administration, may apply to the surrogate, either in person or by his guardian, after giving reasonable notice to the executor or administrator, to be allowed to receive such portion of such legacy or share, as may be necessary for his support.

If it appear to the surrogate that there is at least one third

more, of assets, in the hands of such executor or administrator, than will be sufficient to pay all debts, legacies, and claims against the estate, then known, he may, in his discretion, allow such portion of the legacy or distributive share to be advanced, as may be necessary for the support of the person entitled thereto, upon satisfactory bonds being executed for the return of such portion, with interest, whenever required.

5th. The duties of the Surrogate in relation to the sale and disposition of the real estate of deceased persons.

The surrogate having obtained jurisdiction of the subject matter by the petition of the executor or administrator, and it shall appear that any of the devisees or heirs of the deceased are minors, he shall immediately, and before any other proceedings, appoint some disinterested freeholder guardian of such minors, for the sole purpose of appearing for them, and taking care of their interests in the proceedings.

If any such minors are within the county of such surrogate, they shall be personally served with notice, ten days previously, of the intention to apply for the appointment of a guardian, that they may be heard in the selection of such guardian.

If upon such application to the surrogate, it shall appear, that all the personal estate of the deceased, applicable to the payment of his debts, has been applied to that purpose, and that there remain debts unpaid, for the satisfaction of which a sale may be made under the provisions of this title, he shall make an order, directing all persons interested in the estate, to appear before him, at a time and place therein to be specified, not less than six weeks, and not more than ten weeks, from the time of making such order, to show cause why authority should not be given to the executors or administrators applying therefor, to mortgage, lease, or sell so much of the real estate of their testator or intestate, as shall be necessary to pay such debts.

Every such order to show cause, shall be published for four weeks in a newspaper printed in the county, and a copy thereof shall be served personally, on every person in the occupa-

tion of the premises, of which a sale is desired, wherever the same may be situated, and on the widow and heirs and devisees of the deceased, residing in the county of the surrogate, at least fourteen days before the day therein appointed for showing cause.

If such personal service cannot be made, or if such widow, heirs or devisees, do not reside in such county, but reside in the state, then a copy of such order may be served personally, forty days before the day of showing cause, or by publishing the same once in each week, for four weeks, in succession, in the state paper. If such heirs or devisees do not reside within this state, or cannot be found therein, the order shall be published once in each week, for six weeks successively, in the state paper, or a copy thereof may be personally served on them, at least forty days before the time appointed therein, for showing cause.

The surrogate, at the time and place appointed in the order, and at such other times and places as the hearing shall be adjourned to, upon due proof of the service and publication above required, shall proceed to hear and examine the allegations and proofs of the executors or administrators applying for such authority, and of all persons interested in the estate, who shall think proper to oppose the application.

The executors or administrators may be examined on oath, and witnesses may be produced and examined by either party; and process to compel their attendance and testimony, may be issued by the surrogate, in the same manner, and with the like effect, as in cases of proving wills before him.

On such hearing, it shall be competent to any heir or devisee of the real estate in question, and to any person claiming under them, to show, that the whole of the personal estate of the deceased has not been duly applied by the executors or administrators, to the payment of his debts, to contest the validity and legality of any debts, demands or claims, which may be represented as existing against the testator or intestate, and to set up the statute of limitations in bar to such claims; and the admission of any such claims so barred, by any executor

or administrator, shall not be deemed to revive the same, so as in any way to affect the real estate of the deceased.

If, upon such hearing, any question of fact shall arise, which, in the opinion of the surrogate, cannot be satisfactorily determined without a trial by jury, he shall have authority to award a feigned issue, to be made up in such form, as to present the question in dispute, and to order the same to be tried at the next circuit court to be held in such county. New trials may be granted therein by the supreme court, as in personal actions pending in that court. The final determination of such issue shall be conclusive as to the facts therein controverted, in the proceedings before the surrogate.

The costs of such issue shall be paid by the party failing, on the order of the surrogate, and such payment may be enforced by him in the same manner as other orders and decrees.

The demands which the surrogate shall, upon such hearing, adjudge valid and subsisting against the estate of the deceased; or which shall have been determined to be valid, on the trial of such issue; or which shall have been recovered against the executors or administrators, by the judgment of a court of law, upon a trial on the merits; shall be by him entered in the book of his proceedings, fully and at large; and the vouchers supporting the same, shall be filed in his office.

The surrogate shall make no order for the mortgaging, leasing, or sale of the real property of the deceased, until upon due examination he shall be satisfied:

1. That the executors or administrators making such application, have fully complied with the preceding provisions.

2. That the debts, for the purpose of satisfying which the application is made, are justly due and owing, and that they are not secured by judgment or mortgage upon, or expressly charged on, the real estate of the deceased; or if such debts be secured by a mortgage or charge, on a portion of such es-

tate, then that the remedies of the creditor by virtue of such mortgage or charge, have been exhausted.

3. That the personal estate of the deceased is insufficient for the payment of such debts ; and that the whole of such estate, which could have been applied to the payment of the debts of the deceased, has been duly applied for that purpose.

The surrogate, when so satisfied, shall in the first place enquire and ascertain whether sufficient monies for the payment of such debts can be raised, by mortgaging, or leasing the real property of the deceased, or any part thereof ; and if it shall appear that such monies can be so raised, advantageously, to the interest of such estate, he shall direct such mortgage or lease, to be made for that purpose.

No such lease shall be for a longer time, than until the youngest person, interested in the real estate leased, shall become twenty-one years of age.

A lease or mortgage executed under the authority of the surrogate as aforesaid, shall be as valid and effectual, as if executed by the testator or intestate immediately previous to his death.

If it shall appear to the surrogate that the monies required cannot be raised by mortgage or lease, advantageously to the estate, he shall from time to time order a sale of so much of the real estate, whereof the testator or intestate died seized, as shall be sufficient to pay the debts, which the surrogate shall have entered in his books, as valid and subsisting.

If such real estate consist of houses or lots, or of a farm, so situated, that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, then the whole or a part thereof, although more than may be necessary to pay such debts, may be ordered to be sold ; and if a sale of the whole real estate, shall appear necessary, to pay such debts, it may be ordered accordingly.

The order shall specify the lands to be sold ; and the surrogate may therein direct the order in which several tracts, lots, or pieces, shall be sold. If it appear that any part of

such real estate has been devised, and not charged in such devise with the payment of debts, the surrogate shall order that the part descended to heirs, be sold before that so devised; and if it appear that any lands devised or descended, have been sold by the heirs or devisees, then the lands remaining in their hands unsold, shall be ordered to be first sold, and in no case shall land devised, expressly charged with the payment of debts, be sold under any order of a surrogate.

Before granting any order for the mortgaging or leasing any real estate, the surrogate shall require from the executor or administrator applying for the same, a bond to the people of this state, with sufficient sureties, to be approved by the surrogate, in a penalty double the amount to be raised by such mortgage or lease, conditioned for the faithful application of the monies arising from such mortgage or lease, to the payment of the debts established before the surrogate on granting the order, and for the accounting for such monies, whenever required by such surrogate, or by any court of competent authority.

Before granting any order for the sale of any real estate, the surrogate shall require a bond in like manner, and with sureties as above directed, in a penalty double the value of the real estate ordered to be sold, conditioned that such executors or administrators will pay all the monies arising from such sale, after deducting the expenses thereof, and will deliver all securities taken by them on such sale, to the surrogate, within twenty days after the same shall have been received and taken by them.

In case of the refusal or neglect of the executors or administrators, applying for such order, to execute, within a reasonable time, any bond required by the two last sections, the surrogate shall appoint a disinterested freeholder, to execute such mortgage or lease, or to make such sales, who shall execute a bond similar, in all respects, to that required of the executors or administrators, in whose place he shall be appointed, and in making such appointment he shall give preference

to any person who shall have been nominated by the creditors of the deceased.

Upon executing and filing with the surrogate such bond, the surrogate shall order the mortgage, lease, or sale to be made by the person so appointed, who shall possess all the power and authority by law conferred on executors and administrators, in relation to the mortgaging, leasing, or sale of the real estate of the deceased, mentioned in the order of the surrogate; and shall, in like manner, be liable to account for his proceedings, and may, in the same manner, be compelled to satisfy debts, to pay over monies, and to deliver securities.

The executors or administrators shall immediately make a return of their proceedings, upon such order of sale, to the surrogate granting the same, who shall examine the proceedings, and may also examine such executors or administrators, or any other person on oath, touching the same; and if he shall be of opinion that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid, at least ten per cent, exclusive of the expenses of a new sale may be obtained, he shall vacate such sale, and direct that another be had; of which notice shall be given, and the sale shall be in all respects conducted as the sale on the first order.

If it shall appear to the surrogate, that such sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum, as above specified, cannot be obtained, he shall make an order confirming such sale, and directing conveyances to be executed.

If the proceeds arising from the mortgage, lease or sale of any lands, made pursuant to the order of any surrogate as herein directed, which shall have been paid over to such surrogate, shall be sufficient to pay all the debts established before the surrogate, on granting the order, the heirs and devisees of the testator or intestate, and all the remaining lands of which he died seized, shall be exonerated from all claim or charge by reason of such debts so established; if such pro-

ceeds shall not be sufficient for that purpose, the heirs and devisees and remaining land, shall be exonerated from such debts, in proportion to the sum raised, and paid over.

The surrogate who shall grant any order for the mortgage, lease or sale of real estate, shall possess the same power, to cite and compel any executor or administrator, to account for the proceeds of the sale, mortgage or lease of any real estate, and to compel the payment of debts, and the payment of monies arising from such sales, and the delivery of securities taken thereon, as if such real estate had been originally personal estate, in the hands of such executor or administrator.

Where the whole, or any part, of the real estate of any deceased person, shall have been sold by virtue of an order of a surrogate, the monies arising from such sale, shall be brought into the office of the surrogate, granting such order, for the purpose of distribution, and shall be by him retained for that purpose.

The surrogate shall, in the first place, pay out of the said monies the charges and expenses of the sale. He shall next satisfy any claim of dower, which the widow of the testator or intestate may have, upon the lands so sold, by the payment of such sum in gross, as shall be deemed, upon the principles of law applicable to annuities, a reasonable satisfaction for such claim, if the widow shall consent to accept such sum in lieu of her dower, by an instrument under seal, duly acknowledged or proved, in the same manner as deeds entitled to be recorded.

If after reasonable notice for that purpose, no such consent be given, then the surrogate shall set apart one third of the purchase money to satisfy such claim, and shall cause the same to be invested in permanent securities on annual interest, in his name of office, which interest shall be paid to such claimant, during life.

If after the deductions aforesaid, from the proceeds of such sale, there shall not be sufficient remaining to pay all the debts of the testator or intestate, then the balance of such proceeds shall be divided, by the surrogate, among the creditors,

in proportion to their respective debts, without giving any preference to bonds, or other specialties, or to any demands on account of any suit being brought thereon.

Every person to whom the deceased shall have been indebted, on a valuable consideration, for any sum of money not due at the time of such distribution, shall receive his proportion with other creditors, after deducting a rebate of legal interest, upon the sum distributed, for the time unexpired of such credit.

Before any such distribution shall be made, notice of the time and place of making the same, shall be published for six weeks successively, in a newspaper printed in the county where the surrogate resides. He may also publish such notice in such other newspaper, as he may deem most likely to give notice to the creditors.

At the time and place appointed, and at such other times and places, as the surrogate shall appoint for that purpose, he shall proceed to ascertain the valid and subsisting debts against the testator or intestate, and shall hear the allegations and proofs of the claimants of such debts, and of the executors, administrators, heirs, devisees, or any other person interested in the estate of the deceased, or in the application of the proceeds of such sale.

Any debts, which shall have been established by the surrogate, on the application for the sale, shall not again be controverted, unless upon the discovery of some new evidence to impeach the same, and then only, upon due notice given to the claimant. Any other debts or demands which shall be presented, and which were not so established, shall be proved to the satisfaction of the surrogate; and the same proceedings may be had to ascertain the same, as are herein before prescribed, upon the hearing, on the application of any executor or administrator, for authority to sell the real estate.

If, after payment of debts and expenses, there be any overplus of the proceeds of the sale, the same shall be distributed, among the heirs and devisees of the testator or intestate, or

the persons claiming under them, in proportion to their respective rights in the premises sold.

Any securities which shall have been taken on the sale of any real estate, shall be delivered to the surrogate, and kept in his office. He shall collect the monies due thereon from time to time, and shall distribute and apply the same among the creditors, whose debts were established before him, in the same proportion as herein directed, respecting the monies arising on such sale.

The securities taken by any surrogate, on the investment of a principal sum at annual interest, to satisfy a dower claim, shall be kept in his office as part of his official papers, and be delivered to his successor; and it shall be the duty of the surrogate to collect such interest, and pay the same to the person entitled thereto.

After the death of the person entitled to such interest, the principal sum so secured shall be collected, and after deducting the costs and charges of the surrogate in the management, collection and distribution thereof, the residue shall be distributed among the creditors of the deceased, who shall have established their debts previous to the original investment of such principal sum, in the same manner, and with the like effect, as herein provided, for the distribution of the proceeds of the sale of real estate.

If there be any surplus remaining after such distribution, it shall be divided among the heirs and devisees of the testator, or the heirs of the intestate, or the persons claiming under them, in proportion to their respective rights in the premises sold.

If, after the rendering of an account by an executor or administrator to a surrogate, as by law provided, it shall appear that there are not sufficient assets to pay the debts of the deceased, the surrogate upon the application of any creditor, made within three years after the granting of letters testamentary or of administration, shall grant an order to such executor or administrator, to show cause why he should not be re-

quired to proceed and sell, or otherwise dispose of, the real estate of the deceased, for the payment of his debts.

Such order shall be served personally on the executor or administrator, to whom it shall be directed, at least fourteen days, before the day therein appointed for showing cause.

If no cause to the contrary be shown, the surrogate shall order notice of such application to be served and published, in the same manner as herein before directed, on the application of an executor; and if at the day appointed in such notice, the surrogate be satisfied of the legality of the proceedings he may order such executor or administrator to mortgage, lease, or sell so much of the real estate of which the testator or intestate died seized, as shall be sufficient for the payment of the debts established before him.

Upon such order being granted and served, the executor or administrator shall mortgage, lease or sell, as directed in such order, in the manner herein before directed, upon his own application; the like bond shall be executed, the like notice shall be given, and the same proceedings had in all respects, as are herein prescribed on the application of an executor, and the proceeds shall be returned to the surrogate in the like cases, and distribution shall be made in the like manner.

If an executor or administrator shall refuse or neglect to serve and publish the notices above required, or to do any other act necessary to authorise an order for the mortgage, leasing or sale of the real property of the deceased, the surrogate may appoint a disinterested freeholder to perform the duties herein enjoined upon such executor or administrator, who shall proceed therein in the same manner as herein directed, in respect to such executor or administrator.

No suit shall be brought against the heirs or devisees of any real estate, in order to charge them with the debts of the testator or intestate, within three years from the time of granting letters testamentary or of administration upon the estate of their testator or intestate; and if after the expiration of that time, such suit shall be brought, upon proof of an appli-

cation having been made, before the expiration of that period, for an order of sale pursuant to the provisions of this title, such suit shall be stayed by the court in which it shall be pending, until the result of such application. And if an order for sale be granted, thereupon, such suit shall not be any further prosecuted, unless the plaintiff will allege that lands have descended to the heirs or been devised to the devisees, which were not included in any order of sale, in which case, a decree in such suit shall not charge, or in any way affect, any land, so ordered to be sold; and the plaintiff so proceeding in such suit, shall not be entitled to any share in the distribution of the monies arising on the sale, mortgage or leasing, of any premises, pursuant to such application.

But if the plaintiff in any such suit, shall elect to discontinue the same, after notice of an application having been made to a surrogate, according to the provisions of this title, he shall be entitled to distribution as other creditors, on establishing his claim.

Where by any last will a sale of real estate shall be ordered to be made, either for the payment of debts or legacies, the surrogate in whose office such will was proved, shall have power to cite the executors in such will named, to account for the proceeds of the sales, and to compel distribution thereof; and to make all necessary orders and decrees thereon, with the like power of enforcing them, as if the said proceeds had been originally personal property of the deceased, in the hands of an administrator.

The several surrogates shall record in books to be provided by them for that purpose, all orders and decrees by them made, upon any proceedings before them in relation to the sale of real estate, and shall file and preserve all papers, returns, vouchers and documents connected with such proceedings.

If the deceased, at the time of his death, was possessed of a contract for the purchase of land, his interest in such land and under such contract, may be sold on the application of his executor or administrator, or of any creditor, in the same

eases and in the same manner, as if he had died seized of such land; and the same proceedings may be had for that purpose, as are prescribed in this article in respect to lands of which he died seized.

Such sale shall be made subject to all payments, that may thereafter become due on such contract; and if there be any such payments thereafter, to become due, such sale shall not be confirmed by the surrogate, until the purchaser shall execute a bond to the executors or administrators of the deceased, for their benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased in the lands so contracted for, in a penalty double the whole amount of payments thereafter to become due on such contract, with such sureties as the surrogate shall approve, conditioned that such purchaser will make all payments for such land, that shall become due after the date of such bond, and will fully and amply indemnify the executors or administrators of the deceased, as the case may be, and the person so entitled, against all demands, costs, charges and expenses, by reason of any covenant or agreement contained in such contract, or by reason of any other obligation or liability of the deceased, on account of the purchase of such lands, and against all other covenants and agreements of the deceased, to the vender of such land, in relation thereto.

But if there be no payments thereafter to become due on account of such contract, no bond shall be required of the purchaser.

When such bond shall be executed, in the cases where it is required, and in all cases where the sale shall be confirmed, the surrogate shall direct the executors or administrators of the deceased, to execute an assignment of such contract, to the purchaser; which assignment shall vest in such purchaser, his heirs and assigns, all the right, interest and title, of the persons entitled to the interest of the deceased, in the land sold, at the time of sale; and such purchaser shall have the same rights and remedies against the vender of such land, as the deceased would have had, if he had lived.

If in the judgment of the surrogate, a part of the land so contracted, may be sold advantageously to the interest of the estate of the deceased, and so that the purchase monies of such part, will satisfy and discharge all the payments to be made for such land, according to the contract, he may order such part only to be sold; and in that case, the purchaser shall not be required to execute any bond.

The monies arising from any such sale, shall be paid to the surrogate, and shall be disposed of by him, in the payment of the charges and expenses of such sale, and in satisfying any claim of dower which the widow of the deceased may have upon the lands so sold, in the manner herein before provided, in respect to the sale of lands, of which the deceased died seized.

But such claim of dower is hereby declared to extend only to the annual interest, during the life of the widow, upon one-third of the surplus of the monies arising from such sale, which shall remain, after paying all sums of money due from the deceased, at the time of such sale, for the land so contracted and sold.

The surrogate shall apply the residue of the monies arising from such sale, in the first instance, to the payment of all sums of money, then due from the deceased to the vender of the land so contracted, on account of such contract, and shall then proceed to distribute the balance among the creditors of the deceased, in the manner herein before provided; and if there be any surplus, after payment of debts and expenses, the same shall be distributed among the persons, who would have been entitled to the interest of the deceased in the land sold, if such sale had not been made, or the persons claiming under them, in proportion to their respective rights in the premises sold.

6th. The duties of the Surrogate in relation to guardians :—

Every minor, of the age of fourteen years, may apply, by petition, to the surrogate of the county where the residence

of such minor may be, for the appointment of such guardian as the minor may nominate, subject to the approbation of the surrogate.

If such minor be under the age of fourteen years, any relative or other person, in his behalf, may apply to the surrogate of the county where such minor shall reside, for the appointment of a guardian of the minor, until he shall arrive at the age of fourteen years, and until another guardian shall be appointed. Upon the making of any such application, the surrogate shall assign a day for the hearing thereof, and shall direct such notice of the hearing, to be given to the relatives of the minor residing in the county, as he shall, on due enquiry, think reasonable.

The surrogate to whom application may be made for the appointment of guardians to minors, shall have the same power to allow and appoint guardians, as is possessed by the chancellor; and in all cases, he shall enquire into the circumstances of the minor, and ascertain the amount of his personal property, and the value of the rents and profits of his real estate; and for that purpose, may compel any person to appear before him, and testify in relation thereto.

On the appointment of a guardian to a minor, the surrogate is to give preference first, to the mother of the minor; second, to the grandfather on the father's side; third, to the grandfather on the mother's side; fourth, to either of the uncles on the father's side; fifth, to either of the uncles on the mother's side; sixth, to any one of the next of kin to the minor, who would be entitled to a distribution of his personal estate, in case of his death.

The surrogate has the same discretion, in selecting such guardians, as is given to him in the appointment of administrators.

Before appointing any person guardian of a minor, the surrogate is to require of such person a bond to the minor, with sufficient security, to be approved by him, in a penalty double the amount of the personal estate, and of the value of the rents and profits of the real estate, conditioned, that such

person will faithfully, in all things, discharge the duty of a guardian to such minor, according to law, and that he will render a just and true account of all monies and property received by him, and of the application thereof, and of his guardianship in all respects, to any court having cognizance thereof, when thereunto required.

This bond is to be filed by the surrogate, and in case of a breach of the condition thereof, may be prosecuted in the name of the ward, although he may not have arrived at full age, by his next friend or guardian, *whenever the surrogate shall direct.*

All guardians appointed by the surrogate, possess the same powers as testamentary guardians. Guardians of minors under fourteen years, are responsible as such until the minor arrives to the age of twenty-one years, or until another guardian be appointed, or the first guardian be displaced.

Guardians are to be cited to account before the surrogate, who appointed, in the same manner as administrators, upon the application of their wards, or any relative of such ward, and on good cause being shown.

Any ward, when arrived at full age, may compel his guardian to account before the surrogate, *without showing any cause.*

Every guardian of a ward who shall have arrived at full age, and every guardian who shall be superseded in his trust by another guardian, may apply to the surrogate who appointed him, for a citation to his ward, or to such new guardian, to attend the settlement of his accounts; the citation to be issued by the surrogate, and to be served as in case of proceedings for removal of a guardian.

Appeals from the final order of the surrogate, on the settlement of guardians accounts, may be made to the chancellor, in the same manner and time, and with the same effect as in cases of administrators.

On the application of any ward, or of any relative in his behalf, or of the surety of a guardian, to the surrogate who appointed any guardian, complaining of the incompetency of

such guardian, or of his wasting the real or personal estate of his ward, or of any misconduct in relation to his duties as guardian, the surrogate, upon being satisfied by proof, of the probable truth of such complaint, shall issue a citation to such guardian, to appear before him at the day and place therein specified, to show cause why he should not be removed from his guardianship.

Such citation shall be served personally on the guardian to whom it may be directed, at least fourteen days before the return thereof; or if such guardian shall have absconded or concealed himself, so that such citation cannot be personally served, it may be served, by leaving a copy thereof, at the place of residence of such guardian.

The surrogate, at the day appointed for showing cause, and on such other days as he shall appoint, shall proceed to enquire into the alleged complaint, and shall grant subpoenas to compel the attendance of witnesses, to any person applying; and if satisfied of the incompetency or misconduct of such guardian, he may, by an order to be duly entered in his minutes, remove the said guardian from his trust.

Upon such removal being made, the surrogate may proceed and appoint a new guardian, in the same manner as if no guardian had been appointed.

Any person interested in the allowance, or appointment, or removal of a guardian, as next of kin, or otherwise, and any guardian who may have been removed by any surrogate, may, within six months after any order shall have been made by a surrogate for the appointment of a guardian, or for his removal, or refusal to make such removal, appeal to the chancellor, who shall make such order for notifying the adverse party, and for correcting any such proceedings, as he may deem just.

But no appeal made by a guardian, from the order of a surrogate removing him, shall in any wise affect such order, until the same be reversed.

Every guardian in soccage, and every general guardian, whether testamentary or appointed, shall safely keep the

things that he may have in his custody belonging to his ward, and the inheritance of his ward, and shall not make or suffer any waste, sale or destruction of such things or of such inheritance, but shall keep up and sustain the houses, gardens, and other appurtenances to the lands of his ward, by and with the issues and profits thereof, or with such other monies belonging to his ward, as shall be in his hands; and shall deliver the same to his ward, when he comes to his full age, in as good order and condition, at least, as such guardian received the same, inevitable decay and injury only excepted; and he shall answer to his ward for the issues and profits of real estate, received by him by a lawful account.

If any guardian shall make or suffer any waste, sale or destruction of the inheritance of his ward, he shall lose the custody of the same, and of such ward, and forfeit to the ward thrice the sum at which the damages shall be taxed by the jury.

Guardians shall be allowed for their reasonable expenses, and the same rate of compensation for their services, as is provided by law for executors.

7th. The duties of the Surrogate in the admeasurement of dower.

Any widow who shall not have had her dower assigned to her, within forty days after the decease of her husband, may apply, by petition, for the admeasurement of her dower, to the surrogate of the county in which the lands subject to dower lie; specifying therein the lands to which she claims dower.

A copy of such petition, with notice of time and place when it will be presented, shall be served, at least twenty days previous to its presentation, upon the heirs of her husband; or if they are not the owners of the lands subject to dower, then upon the owners of such lands, claiming a freehold estate therein; or their guardians, when any such heirs or owners are minors.

Such notice may be served personally, on any party of full age; or upon the guardians of minors; or by leaving the

same with any person of proper age, at the last residence of such party or guardian, in case of his temporary absence ; and if any such heirs or owners be a resident out of this state, the service of such notice may be upon the tenant in actual occupation of the lands, or if there be no tenant, by publishing the same for three weeks successively, in some newspaper printed in the county where such lands are situated.

Where such heirs or owners are minors, and have no guardian, the surrogate, on application of the widow, shall appoint some discreet and substantial freeholder a guardian of such infants, for the sole purpose of appearing for, and taking care of the interests of such infants in the proceedings.

Notice of the application for the admeasurement of dower, and all notices in the subsequent proceedings, shall be served on such guardian, whether the infant resides within this state or not.

After the expiration of forty days from the death of any husband, his heirs, or any of them, or the owners of any land subject to dower, claiming a freehold estate therein, or the guardian of any such heirs or owners, may, by notice in writing, require the widow of such husband to make demand of her dower, within ninety days after the service of such notice, of the lands of her deceased husband, or of such part thereof as shall be specified in such notice.

If such widow shall not make her demand of dower, within the time specified in such notice, by commencing a suit, or by an application for admeasurement, as herein specified ; or if such widow shall not make such demand within one year after her husband's death, although no notice to that effect shall have been given ; the heirs of the husband of such widow, or any of them, or the owners of any lands subject to dower, claiming a freehold interest therein, or the guardian of any such heirs or owners, may apply, by petition, to the surrogate of the same county, for the admeasurement of the said widow's dower of the lands of her husband, or of such part thereof as shall be specified in said petition.

A copy of such petition, with the notice of the time and

place of presenting the same, shall be served personally on such widow, twenty days previous to its presentation.

Upon such application being made, either by a widow, or by any heir or owner, or by the guardian of such heir or owner, the surrogate may, upon hearing of the parties, order that admeasurement be made of such widow's dower of all the lands of her husband, or of such part thereof as shall have been specified in such application.

Such surrogate shall thereupon appoint three reputable and disinterested freeholders commissioners, for the purpose of making such admeasurement, by an order which shall specify the lands of which dower is to be admeasured, and the time at which the commissioners shall report.

The commissioners so appointed, before entering upon their duties, shall be sworn, before the surrogate who appointed them, or before some officer authorised to take affidavits, that they will faithfully, honestly and impartially discharge the duty, and execute the trust reposed in them by such appointment.

If the persons so appointed commissioners, or either of them, shall die, resign, or neglect or refuse to serve, others may be appointed in their places, by the surrogate who appointed the first commissioners, and shall take the same oath.

The commissioners so appointed, shall execute their duties as follows:

1. They shall admeasure and lay off, as speedily as possible, the one third part of the lands embraced in the order for their appointment, as the dower of such widow, designating such part with posts, stones, or other permanent monuments.

2. In making such admeasurement, they shall take into view any permanent improvements made upon the lands embraced in the said order, by any heir, guardian or minor, or other owners, since the death of the husband of such widow, or since the alienation thereof by such husband; and if practicable, shall award such improvement within that part of the lands not allotted to such widow; and if not practicable so to award the same, they shall make a deduction from the lands,

allotted to such widow, proportionate to the benefit she will derive from such part of the said improvements, as shall be included in the portion assigned to her.

3. They shall make a full and ample report of their proceedings, with the quantity, courses and distances of the land admeasured and allotted by them to the widow, with a description of the posts, stones, and other permanent monuments thereof, and the items of their charges, to the court by which they were appointed, at the time specified in the order for their appointment.

4. They may employ a surveyor, with necessary assistants, to aid them in such admeasurement.

The surrogate appointing such commissioners, may, upon their application, or that of either party, enlarge the time for making their report; and may, by order, compel such report, or discharge the commissioners neglecting to make the same, and appoint others in their places.

Such report shall be filed, and entered at large in a book to be provided by the surrogate for that purpose.

The surrogate to whom such report shall be made, may, at the time appointed for receiving the same, or at such other time to which the hearing shall have been adjourned, on good cause shown, set aside the said report, and appoint, as often as may be necessary, new commissioners, who shall proceed in the manner herein before directed; and if not set aside, the surrogate shall, by order, confirm the said report and admeasurement.

The admeasurement so made and confirmed, shall, at the expiration of thirty days from the date of such confirmation, unless appealed from, be binding and conclusive, as to the location and extent of the said widow's right of dower, on the parties who applied for the same, and on all parties to whom notice shall have been given, as herein before directed. But no person shall be precluded thereby from controverting the right and title of such widow to the dower so admeasured.

The widow to whom dower shall be admeasured, at the expiration of thirty days from the date of said confirmation, un-

less the same be appealed from, may bring and maintain an action of ejectment, to recover the possession of the lands so admeasured to her for her dower (in which her right to such dower may be controverted), and upon recovery, may hold the same during her natural life, subject to the payment of all taxes and charges accruing thereon, subsequent to her taking possession.

Where the commissioners have been appointed by a surrogate, the widow, and any heir or owner of lands affected by the proceedings, or the guardian of such heir or owner, may, within thirty days after the order of confirmation of the report of the commissioners by such surrogate, appeal from such order, to the supreme court, in the manner hereinafter directed.

Such appeal shall be filed with the surrogate granting such order; but shall not be effectual or valid for any purpose, until a bond to the adverse party shall be executed by the appellant, and filed with such surrogate, with security to be approved by the surrogate by whom such order was made, and to be evidenced by an endorsement on such bond, in the penal sum of one hundred dollars, conditioned for the diligent prosecution of such appeal, and for the payment of all costs that may be adjudged by the supreme court against such appellant; and no other notice or proceedings shall be necessary to perfect such appeal.

It shall be the duty of the surrogate, with whom such appeal and bond shall be filed, on receiving the amount of his fees for the service, to transcribe the petition, affidavits, notices, orders, reports, and all other proceedings on the said application, together with the said appeal, to certify them under his official seal, and to transmit the said copies to the supreme court.

The supreme court shall proceed to hear and determine the said appeal; and to review all the proceedings upon the said application, and shall do therein what shall be just.

In case of the reversal of the order of confirmation, the court shall cause the same to be certified to the surrogate, making such order, to the end that new commissioners may be

appointed, or a new admeasurement may be had, as the supreme court shall direct; or the said supreme court may proceed to appoint commissioners to make admeasurement.

In case of the affirmance of the order of confirmation of any surrogate, the supreme court may also, in its discretion, award costs to be paid by the appellant, and to be taxed as the said court shall direct; and the original order of confirmation, and the admeasurement confirmed thereby, shall be binding and conclusive, and authorise an action of ejectment, as herein before specified.

All costs and expenses arising on any proceedings on such application, shall be taxed by the surrogate before whom such proceedings shall be had; and when such application is made to the surrogate, and no appeal shall be made from the order of confirmation, the said costs and expenses shall be paid equally, the one half thereof by the widow, and the other half by the adverse party.

When an appeal is entered, then such costs shall be paid by the party applying for such admeasurement; and if the admeasurement be affirmed on such appeal, the supreme court, in awarding costs, shall require the party appealing to pay the one half of such costs and expenses before the surrogate, if he have not before paid the same.

The hearing of an appeal by the supreme court, shall be brought on by notice, and shall be conducted as other special motions; and notices of the hearing, and all other necessary notices in the said court, may be served on any party, not residing within this state, by leaving the same with the surrogate from whose order the appeal is made, for the use of such party. And the supreme court may, by rule, direct further returns from any surrogate, whenever the same shall be necessary, and may establish such rules to regulate the practice on such appeals, as the said court may deem expedient.

PART II.



Of the powers and duties of Executors and Administrators.

Before proceeding to the peculiar subjects of this part, I deem it my duty to state who may make wills, and what a will is.

All persons, except idiots, persons of unsound mind, married women and infants, may devise their real estate, by a last will and testament, duly executed according to the provisions hereinafter stated.

Every estate and interest in real property descendible to heirs, may be so devised.

Such devise may be made to every person capable by law of holding real estate; but no devise to a corporation shall be valid, unless such corporation be expressly authorised by its charter, or by statute, to take by devise.

Every devise of any interest in real property, to a person who, at the time of the death of the testator, shall be an alien, not authorised by statute to hold real estate, shall be void.—The interest so devised, shall descend to the heirs of the testator; if there be no such heirs competent to take, it shall pass under his will to the residuary devisees therein named, if any there be, competent to take such interest.

Every will that shall be made by a testator, in express terms, of all his real estate, or in any other terms denoting his intent to devise all his real property, shall be construed to pass all the real estate, which he was entitled to devise, at the time of his death.

If by any will, any real estate be charged with any debt, and the creditor whose debt is so charged, shall attest the execution thereof, such creditor, notwithstanding such charge,

shall be admitted as a competent witness, to prove the execution of such will.

No will in writing, except in the cases hereinafter mentioned, nor any part thereof, shall be revoked, or altered, otherwise than by some other will in writing, or some other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which the will itself was required by law to be executed; or unless such will be burnt, torn, cancelled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by another person in his presence, by his direction and consent; and when so done by another person, the direction and consent of the testator, and the fact of such injury or destruction, shall be proved by at least two witnesses.

If after the making of any will, disposing of the whole estate of the testator, such testator shall marry, and have issue of such marriage, born either in his life-time or after his death, and the wife or the issue of such marriage, shall be living at the death of the testator, such will shall be deemed revoked, unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, or in such way mentioned therein, as to show an intention not to make such provision; and no other evidence, to rebut the presumption of such revocation, shall be received.

A will executed by an unmarried woman, shall be deemed revoked by her subsequent marriage.

A bond, agreement, or covenant, made for a valuable consideration, by a testator, to convey any property devised or bequeathed in any will previously made, shall not be deemed a revocation of such previous devise or bequest, either at law, or in equity; but such property shall pass by the devise or bequest, subject to the same remedies on such bond, agreement, or covenant, for a specific performance or otherwise, against the devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

A charge or incumbrance upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any covenant, shall not be deemed a revocation of any will relating to the same estate, previously executed; but the devises and legacies therein contained, shall pass and take effect, subject to such charge or incumbrance.

A conveyance, settlement, deed, or other act of a testator, by which his estate or interest in property, previously devised or bequeathed by him, shall be altered, but not wholly divested, shall not be deemed a revocation of the devise or bequest of such property; but such devise or bequest shall pass to the devisee or legatee, the actual estate or interest of the testator, which would otherwise descend to his heirs, or pass to his next of kin; unless in the instrument by which such alteration is made, the intention is declared, that it shall operate as a revocation of such previous devise or bequest.

But if the provisions of the instrument by which such alteration is made, are wholly inconsistent with the terms and nature of such previous devise or bequest, such instrument shall operate as a revocation thereof, unless such provisions depend on a condition or contingency, and such condition be not performed or such contingency do not happen.

Whenever a testator shall have a child born after the making of his will, either in his life-time or after his death, and shall die, leaving such child, so after born, unprovided for by any settlement, and neither provided for, nor in any way mentioned in his will, every such child shall succeed to the same portion of the father's real and personal estate, as would have descended or been distributed to such child, if the father had died intestate, and shall be entitled to recover the same portion from the devisees and legatees, in proportion to, and out of the parts devised and bequeathed to them, by such will.

If any person shall be a subscribing witness to the execution of any will, wherein any beneficial devise, legacy, interest, or appointment of any real or personal estate, shall be made to such witness, and such will cannot be proved without the testimony of such witness, the said devise, legacy, interest,

or appointment, shall be void, so far only as concerns such witness, or any claiming under him ; and such person shall be a competent witness, and compellable to testify respecting the execution of the said will, in like manner as if no such devise or bequest had been made.

But if such witness would have been entitled to any share of the testator's estate, in case the will was not established, then so much of the share that would have descended or have been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will, and he shall recover the same of the devisees or legatees named in the will, in proportion to, and out of, the parts devised and bequeathed to them.

Whenever any estate, real or personal, shall be devised or bequeathed to a child or other descendant of the testator, and such legatee or devisee shall die during the life-time of the testator, leaving a child or other descendant who shall survive such testator, such devise or legacy shall not lapse, but the property so devised or bequeathed shall vest in the surviving child or other descendant of the legatee or devisee, as if such legatee or devisee had survived the testator, and had died intestate.

If, after the making of any will, the testator shall duly make and execute a second will, the destruction, cancelling or revocation of such second will, shall not revive the first will, unless it appear by the terms of such revocation, that it was his intention to revive and give effect to his first will ; or unless after such destruction, cancelling or revocation, he shall duly republish his first will.

All wills, whenever proved according to law, except such as are required to be deposited, shall, after being recorded, be returned upon demand, to the person who delivered the same ; or in case of his death, insanity, or removal from the state, to any devisee named in such will, or to the heirs or assigns of such devisee ; or if the same relate to personal estate only, to any acting executor of such will, or administrator with the will annexed, or to a legatee named therein.

After any will of real or personal estate, or of both, shall have been proved before a surrogate, any devisee or legatee named therein, or any heir or next of kin to the testator, may within three months thereafter, appeal to the circuit judge of the circuit, from the decision of the surrogate, either admitting such will to record, or probate, or refusing the same: and upon such appeal being filed with the surrogate, it shall stay the recording or the probate of such will until it be determined.

The party filing such appeal, shall, at the same time, execute and file with the surrogate a bond, in the penalty of one hundred dollars, to the people of this state, with such sureties as the surrogate shall approve, conditioned for the diligent prosecution of such appeal, and for the payment of such costs as shall be taxed against him, in the event of his failure to impeach the validity or execution of such will. No appeal shall be deemed valid, until such bond be filed.

If it appear to the circuit judge that the decision of the surrogate was erroneous, he may, by order, reverse such decision; and if such reversal be founded upon a question of fact, shall direct a feigned issue to be made up, to try the questions arising upon the application to prove such will, and shall direct the same to be tried at the next circuit court, to be held in the county where the surrogate's decision was made.

Such issue shall be made up and tried in the same manner as issues awarded by the court of chancery; but a new trial of such issue may be granted by the supreme court, in the same manner as if it had been formed in a suit, originally commenced in such court.

The final determination of such issue, shall be conclusive as to the facts therein controverted, in respect to wills of personal estate only, upon the parties to the proceedings: if such determination be in favor of the validity of such will, either of real or personal estate, or in favor of the sufficiency of the proof thereof, the surrogate, to whom such determination shall be certified, shall record such will, or admit the same to probate, as the case may be.

If such determination be against the validity of such will, or against the competency of the proof thereof, the surrogate shall annul and revoke the record or probate thereof, if any shall have been made.

The costs and expenses of making up an issue, and of the trial thereon, and all subsequent costs thereon, shall be paid by the party appealing, in case of his failure to impeach the validity or execution of the will. Such costs and expenses may be collected in a suit upon the bond herein directed to be given, which shall be prosecuted for that purpose whenever directed by the surrogate.

If the appellant succeed in impeaching the validity or execution of the will, the party who shall have maintained such validity or execution, may be required, by the surrogate, to pay the costs and expenses of the proceedings, either personally or out of the property of the deceased; and such payment may be enforced by process of attachment.

Whenever any will of real or personal estate shall be lost or destroyed, by accident or design, the court of chancery and the several equity courts having jurisdiction, shall have the same power to take proof of the execution and validity of such will, and to establish the same, as in the case of lost deeds.

Upon such will being established by the decree of a competent court, such decree shall be recorded by the surrogate, before whom the will might have been proved, if not lost or destroyed, and letters testamentary, or of administration with the will annexed, shall be issued thereon by him, in the same manner as upon wills duly proved before him.

If before, or during the pendency of, an application to prove a lost or destroyed will, letters of administration be granted on the estate of the testator, or letters testamentary of any previous will of the testator be granted, the court, to which such application shall be made, shall have authority to restrain the administrators or executors so appointed, from any acts or proceedings, which it may judge would be injuri-

ous to the legatees or devisees claiming under such lost or destroyed will.

No will of any testator who shall die hereafter, shall be allowed to be proved as a lost or destroyed will, unless the same shall be shown to have been fraudulently destroyed, in the life time of the testator, or be proved to have been in existence at the time of the death of the testator, nor unless its provisions shall be clearly and distinctly proved, by at least two credible witnesses, a correct copy or draft being deemed equivalent to one witness.

The provisions of this title, in relation to the proof and probate of wills hereafter to be had, and the jurisdiction of the surrogate, and his proceedings thereon, shall apply as well to wills made previously, as to those made subsequent to this time.

The provisions stated in relation to the revocation of wills, shall apply to all wills made by any testator, who shall be living, at the expiration of one year, from the first of January, eighteen hundred and thirty.

The duties of executors, under the new law, are extended, and their rights amply protected.

I have divided their duties in the same order as the duties of the surrogate are arranged under the first part of this treatise—and

1st. As it relates to the proof of Wills:—

When any real estate shall be devised by will, any executor or devisee named therein, and any person interested in such estate, may have such will proved, before the surrogate of the county, to whom the probate of the will of the testator would belong.

The person intending to apply for the proof of such will shall give notice of his intention to the heirs of the testator, as follows :

1. To such heirs as reside in the county where such proof is intended to be taken, by serving such notice personally, at least fifteen days previous to such application.

2. To such heirs as do not reside in the county, but reside in the state, by serving the same personally, twenty days previously.

3. To such heirs as cannot be found in the state, and to such as do not reside therein, by serving such notice personally, twenty days previously, or by publishing it once in each week, for six weeks, in the state paper.

If any of such heirs shall be minors, and have guardians, service of such notice shall be made upon such guardians, in the same manner, as prescribed in the last preceding section. If they shall have no guardians, the surrogate shall appoint guardians, to take care of there interests in the premises.

Witnesses may be summoned by subpoenas, to be issued by the surrogate, at any time before the day specified, in such notice, and may be served as in cases of personal actions; and a clause may be added to any such subpoena, commanding any person having the custody of, or power over, any such will, to produce the same before the said surrogate, for the purpose of being proved.

Disobedience to any such subpoena shall be proceeded against and punished, as in other cases of proceedings before surrogates. If any person be committed for not producing any will, he may be discharged, on producing the same to the surrogate who committed him, by an order for that purpose.

The record of the proofs and examinations taken pursuant to the provisions, as herein above stated, and the exemplifications of such record, by the surrogate in whose custody it may be, shall be received as evidence upon any trial or controversy concerning the same will, after it shall have been proved in such trial or controversy, that the lands in question therein, have been uninterruptedly held under such will, for the space of twenty years, before the commencement of the suit, in which such trial or controversy shall be had; and shall be of the same force and effect as if taken in open court, upon such trial or in such controversy.

The exemplification of the record of any last will and

testament, proved before the judge of the former court of probates, and recorded in his office, before the first day of January, one thousand seven hundred and eighty-five, certified under the seal of the officer in whose custody such record shall be, shall be received in evidence in all cases, after it shall have been made to appear, that diligent and fruitless search has been made for the original will.

2nd. and 3rd. The duty of Executors and Administrators, in obtaining Letters Testamentary, and Letters of Administration.

The executor, and person applying for letters of administration, commences his proceedings before the surrogate by petition. His next duty will be to serve, or cause to be served, all citations issued by the surrogate, according to law, and make, or cause to be made, affidavit, or other proof of the due service of such citations. The executor is also bound to appear and defend the will of his testator, against all the allegations of all persons, desirous of contesting its validity.

It is sufficient here to make this brief statement, inasmuch as the particular method for executors and administrators to procure their authority, has been in this treatise necessarily blended with the duties of the surrogate—*vide* pa. 14 to 30 *ante*.

4th. Of the duties of Executors and Administrators, in returning Inventories and settling their Accounts.

After the executor or administrator is sworn, his first duty is to apply, in writing, to the surrogate for the appointment of appraisers.

The executors and administrators of any testator or intestate, within a reasonable time after qualifying, and after giving the notice in the next section required, with the aid of appraisers so appointed by the surrogate, shall make a true and perfect inventory of all the goods, chattels and credits, of such testator or intestate, and where the same shall be in different

and distant places, two or more such inventories, as may be necessary.

A notice of such appraisement shall be served, five days previous thereto, on the legatees and next of kin, residing in the county where such property shall be ; and it shall also be posted in three of the most public places of the town. In every such notice, the time and place at which such appraisement will be made, shall be specified.

Before proceeding to the execution of their duty, the appraisers shall take and subscribe an oath, to be inserted in the inventory made by them, before any officer authorised to administer oaths, that they will truly, honestly and impartially appraise the personally property, which shall be exhibited to them, according to the best of their knowledge and ability.

The appraisers shall, in the presence of such of the next of kin, legatees, or creditors of the testator or intestate as shall attend, proceed to estimate and appraise the property which shall be exhibited to them ; and shall set down each article separately, with the value thereof in dollars and cents, distinctly, in figures, opposite to the articles respectively.

The following property shall be deemed assets, and shall go to the executors or administrators, to be applied and distributed as part of the personal estate of their testator or intestate, and shall be included in the inventory thereof:

1. Leases for years ; lands held by the decease from year to year ; and estates held by him for the life of another person.

2. The interest which may remain in the deceased at the time of his death, in a term for years, after the expiration of any estate for years therein, granted by him or any other person.

3. The interest in lands devised to an executor for a term of years, for the payment of debts.

4. Things annexed to the freehold, or to any building, for the purpose of trade or manufacture, and not fixed into the wall of a house, so as to be essential to its support.

5. The crops growing on the land of the deceased, at the time of his death.

6. Every kind of produce raised annually by labor and cultivation, excepting grass growing and fruit not gathered.

7. Rent reserved to the deceased, which had accrued at the time of his death.

8. Debts secured by mortgages, bonds, notes or bills; accounts, money and bank bills, or other circulating medium, things in action, and stock in any company, whether incorporated or not.

9. Goods, wares, merchandize, utensils, furniture, cattle, provisions, and every other species of personal property and effects, not hereinafter excepted.

Things annexed to the freehold, or to any building, shall not go to the executor, but shall descend with the freehold to the heirs or devisees, except such fixtures, as are mentioned in the fourth subdivision of the last section.

The right of an heir to any property not enumerated in the preceding sixth section, which by the common law would descend to him, shall not be impaired by the general terms of that section.

Where a man, having a family, shall die, leaving a widow, or a minor child or children, the following articles shall not be deemed assets, but shall be included and stated in the inventory of the estate, without being appraised:

1. All spinning wheels, weaving looms, and stoves, put up, or kept, for use by his family.

2. The family bible, family pictures, and school books used by or in the family of such deceased person; and books, not exceeding in value fifty dollars, which were kept and used as part of the family library, before the decease of such person.

3. All sheep, to the number of ten, with their fleeces, and the yarn and cloth manufactured from the same; one cow; two swine, and the pork of such swine.

4. All necessary wearing apparel, beds, bedsteads, and bedding; necessary cooking utensils; the clothing of the

family ; the clothes of a widow, and her ornaments proper for her station ; one table, six chairs, six knives and forks, six plates, six teacups and saucers, one sugar dish, one milk-pot, one teapot and six spoons.

The said articles shall remain in the possession of the widow, if there be one, during the time she shall live with, and provide for, such minor child or children. When she shall cease so to do, she shall be allowed to retain as her own, her wearing apparel, her ornaments, and one bed, bedstead and the bedding for the same ; and the other articles so exempted, shall then belong to such minor child or children. If there be a widow, and no such minor child, then the said articles shall belong to such widow.

The inventory shall contain a particular statement of all bonds, mortgages, notes and other securities for the payment of money, belonging to the deceased, which are known to such executor or administrator ; specifying the name of the debtor in each security ; the date ; the sum originally payable ; the endorsements thereon, if any, with their dates ; and the sum which, in the judgment of the appraisers, may be collectable on each security.

The inventory shall also contain an account of all monies, whether in specie or bank bills, or other circulating medium, belonging to the deceased, which shall have come to the hands of the executor or administrator ; and if none shall have come to his hands, the fact shall be so stated in such inventory.

The naming of any person executor in a will, shall not operate as a discharge, or bequest, of any just claim, which the testator had against such executor, but such claim shall be included among the credits and effects of the deceased, in the inventory, and such executor shall be liable for the same, as for so much money in his hands, at the time such debt or demand becomes due ; and he shall apply and distribute the same in the payment of debts and legacies, and among the next of kin, as part of the personal estate of the deceased.

The discharge or bequest in a will, of any debt or demand

of the testator, against any executor named in his will, or against any other person, shall not be valid as against the creditors of the deceased; but shall be construed only as a specific bequest of such debt or demand; and the amount thereof shall be included in the inventory of the credits and effects of the deceased, and shall, if necessary, be applied in the payment of his debts: and if not necessary for that purpose, shall be paid in the same manner and proportion as other specific legacies.

Upon the completion of the inventory, duplicates thereof shall be made and signed by the appraisers; one of which shall be retained by the executor or administrator, and the other shall be returned to the surrogate within three months from the date of such letters.

Any one or more of the executors or administrators named in any letters, on the neglect of the others, may return an inventory; and those so neglecting, shall not thereafter interfere with the administration, or have any power over the personal estate of the deceased; but the executor or administrator so returning an inventory, shall have the whole administration, until the delinquent return and verify an inventory, agreeably to the provisions of this article.

Whenever personal property, or assets of any kind, not mentioned in any inventory that shall have been made, shall come to the possession or knowledge of an executor or administrator, he shall cause the same to be appraised in manner aforesaid, and an inventory thereof to be returned, within two months after the discovery thereof; and the making of such inventory and return, may be enforced in the same manner, as in the case of the first inventory.

If any executor or administrator shall discover that the debts against any deceased person, and the legacies bequeathed by him, cannot be paid and satisfied without a sale of the personal property of the deceased, the same, so far as may be necessary for the payment of such debts and legacies, shall be sold. The sale may be public or private, and, except in the city of New-York, may be on credit, not exceed-

ing one year, with approved security. Such executor or administrator shall not be responsible for any loss happening by such sale, when made in good faith, and with ordinary prudence.

In making such sales, such articles as are not necessary for the support and subsistence of the family of the deceased, or as are not specially bequeathed, shall be first sold; and articles so bequeathed shall not be sold, until the residue of the personal estate has been applied to the payment of the debts.

Every executor and administrator shall proceed, with diligence, to pay the debts of the deceased, and shall pay the same according to the following order of classes:

1. Debts entitled to a preference under the laws of the United States.

2. Taxes assessed upon the estate of the deceased, previous to his death.

3. Judgments docketed, and decrees enrolled, against the deceased, according to the priority thereof, respectively.

4. All recognizances, bonds, sealed instruments, notes, bills and unliquidated demands and accounts.

No preference shall be given in the payment of any debt, over other debts of the same class, except those specified in the third class; nor shall a debt due and payable, be entitled to a preference over debts not due; nor shall the commencement of a suit for the recovery of any debt, or the obtaining a judgment thereon against the executor or administrator, entitle such debt to any preference over others of the same class.

Debts not due, may be paid by an executor or administrator, according to the class to which they may belong, after deducting a rebate of legal interest upon the sum paid, for the time unexpired.

Preference may be given by the surrogate, to rents due or accruing upon leases, held by the testator or intestate, at the time of his death, over debts of the fourth class, whenever it

shall be made to appear to his satisfaction, that such preference will benefit the estate of such testator or intestate.

In any suit against an executor or administrator, the defendant may show, under a notice for that purpose, given with his plea, that there are debts of a prior class unsatisfied, or that there are unpaid debts of the same class with that on which the suit is brought, and judgment shall be rendered only for such part of the assets in his hands, as shall remain after satisfying the debts of the prior class, and as shall be a just proportion to the other debts of the same class, with that on which the suit is brought. But the plaintiff may, as in other cases, take judgment for the whole or part of his debt, to be levied of future assets.

Any executor or administrator, at any time, at least six months after the granting of the letters testamentary or of administration, may insert a notice once in each week, for six months, in a newspaper printed in the county, and in so many other newspapers, as the surrogate may deem most likely to give notice to the creditors of the deceased, requiring all persons having claims against the deceased, to exhibit the same with the vouchers thereof, to such executor or administrator, at the place of his residence or transaction of business, to be specified in such notice, at or before the day therein named, which shall be at least six months from the day of the first publication of such notice.

Upon any claim being presented against the estate of any deceased person, the executor or administrator may require satisfactory vouchers in support thereof, and also the affidavit of the claimant that such claim is justly due, that no payments have been made thereon, and that there are no offsets against the same, to the knowledge of such claimant; which oath may be taken before any justice of the peace, or other officer authorised to administer oaths.

If the executor or administrator doubt the justice of any claim so presented, he may enter into an agreement in writing, with the claimant, to refer the matter in controversy to three disinterested persons, to be approved by the surrogate;

and upon filing such agreement and approval of the surrogate, in the office of a clerk of the supreme court, or of the clerk of the court of common pleas of the county, in which the parties, or either of them, reside, a rule shall be entered by such clerk, either in vacation or in term, referring the matter in controversy to the persons so selected.

The referees shall thereupon proceed to hear and determine the matter, and make report thereon to the court in which the rule for their appointment shall have been entered. The same proceedings shall be had in all respects, the referees shall have the same powers, be entitled to the same compensation, and subject to the same control, as if the reference had been made in an action in which such court might by law, direct a reference; and the court may set aside the report of the referees, or appoint others in their places; and may confirm such report, and adjudge costs, as in actions against executors; and the judgment of the court thereupon shall be valid and effectual in all respects, as if the same had been rendered in a suit commenced by the ordinary process.

If a claim against the estate of any deceased person be exhibited to the executor or administrator, and be disputed or rejected by him, and the same shall not have been referred, the claimant shall, within six months after such dispute or rejection, if the debt, or any part thereof, be then due, or within six months after some part thereof shall have become due, commence a suit for the recovery thereof, or be forever barred from maintaining any action thereon; and no action shall be maintained thereon after the said period, by any other person deriving title thereto from such claimant; and any executor or administrator may, on the trial of any action founded upon such demand, give in evidence, in bar thereof, under a notice annexed to the general issue, the facts of such refusal and neglect to commence a suit.

In case any suit shall be brought upon a claim, which shall not have been presented to the executor or administrator of a deceased person, within six months from the first publication of such notice, as herein before directed, such executor or ad-

ministrator shall not be chargeable for any assets or monies, that he may have paid in satisfaction of any claims of an inferior degree, or of any legacies, or in making distribution to the next of kin, before such suit was commenced, but may prove such notice published by him as aforesaid, and such payment and distribution, in support of his plea, of having administered the estate of the deceased.

In such action, the plaintiff shall be entitled to recover only to the amount of such assets, as shall have been in the hands of such executor or administrator, at the time of the commencement of the suit ; or he may take judgment for the amount of his claim, or any part thereof, to be levied and collected of assets, which shall thereafter come into the hands of such executor or administrator.

In such suit, no costs shall be recovered against the defendants ; nor shall any costs be recovered in any suit at law, against any executors or administrators, to be levied of their property, or of the property of the deceased, unless it appear that the demand on which the action was founded, was presented within the time aforesaid, that its payment was unreasonably resisted or neglected, or that the defendant refused to refer the same, pursuant to the preceding provisions ; in which cases the court may direct such costs to be levied of the property of the defendants, or of the deceased, as shall be just, having reference to the facts that appeared on the trial. If the action be brought in the supreme court, such facts shall be certified by the judge, before whom the trial shall have been had.

No executor or administrator shall be made personally liable for any debt, damages or costs, by reason of his having pleaded any false plea.

But any creditor, who may have neglected to present his claims as aforesaid, may, notwithstanding, recover the same, in the manner prescribed by law, of the next of kin, and legatees of the deceased, to whom any assets shall have been paid or distributed.

No legacies shall be paid by any executor or administrator,

until after the expiration of one year from the time of granting letters testamentary or of administration, unless the same are directed by the will to be sooner paid.

In case a legacy is directed to be sooner paid, the executor or administrator may require a bond, with two sufficient sureties, conditioned, that if any debts against the deceased shall duly appear, and which there shall be no other assets to pay, and there shall be no other assets to pay other legacies, or not sufficient, that then the legatee shall refund the legacy so paid, or such rateable proportion thereof, with the other legatees, as may be necessary for the payment of the said debts, and the proportional parts of such other legacies, if there be any, and the costs and charges incurred by reason of the payment to such legatee; and that if the probate of the will, under which such legacy is paid, shall be revoked, or the will declared void, then that such legatee shall refund the whole of such legacy, with interest, to the executor or administrator entitled thereto.

After the expiration of one year from the granting of any letters testamentary or of administration, the executors or administrators shall discharge the specific legacies bequeathed by any will, and pay the general legacies, if there be assets; and if there be not sufficient assets, then an abatement of the general legacies shall be made in equal proportions.—Such payment may be enforced by the surrogate in the same manner as the return of an inventory, as herein before provided; and also by a suit on the bond of such executor or administrator, whenever directed by the surrogate.

In case of the death of such minor before coming of age, the said securities and monies shall go to his executors or administrators, to be applied and distributed according to law; and the surrogate and his sureties shall, in like manner, be liable to account to such executor or administrator.

In rendering such account, every executor or administrator shall produce vouchers for all debts and legacies paid, and for all funeral charges and just and necessary expenses, which vouchers shall be deposited and remain with the surrogate;

and such executor or administrator may be examined on oath touching such payments, and also touching any property or effects of the deceased which have come to his hands, and the disposition thereof.

An executor or administrator, after the expiration of eighteen months from the granting of letters testamentary or of administration, may render a final account of all his proceedings to the surrogate who appointed him, although not cited to do so, and may obtain a citation to all persons interested in the estate, to attend a final settlement of his accounts; which citation shall be served and published in the manner heretofore prescribed, and thereupon the same proceedings shall be had for a final settlement, and with the like effect, in all respects, as in the case of a settlement at the instance of a creditor.

The preceding provisions respecting the distribution of estates, shall not apply to the personal estates of married women; but their husbands may demand, recover, and enjoy the same, as they are entitled by the rules of the common law.

5th. The duties of Executors and Administrators in relation to the sales of Real Estate.

After the executors or administrators of any deceased person, shall have made and filed an inventory according to law, and shall have rendered an account of their proceedings to the surrogate, and the same shall have been allowed and settled, if they discover the personal estate of their testator or intestate, to be insufficient to pay his debts, they may, at any time within three years, after the granting of their letters testamentary or of administration, apply to the surrogate for authority to mortgage, lease or sell so much of the real estate of their testator or intestate, as shall be necessary to pay such debts.

The petition shall set forth:

1. The amount of personal property which has come to the hands of the executor or administrator.
2. The application thereof.

3. The debts outstanding against the testator or intestate as far as the same can be ascertained.

4. A description of all the real estate of which the testator or intestate died seized, with the value of the respective portions or lots, and whether occupied or not, and if occupied, the names of the occupants, and

5. The names and ages of the devisees, if any, and of the heirs of the deceased ;

And such petition shall be verified by the oath of the party presenting the same.

If it shall appear to the surrogate by such petition, or by other competent evidence, that any of the devisees or heirs of the deceased are minors, the surrogate shall immediately, and before any other proceeding, appoint some disinterested freeholder, guardian of such minors, for the sole purpose of appearing for them, and taking care of their interest in the proceedings.

Whenever a sale is ordered, notice of the time and place of holding the same, shall be posted, for six weeks, at three of the most public places in the town or ward where the sale shall be had, and shall be published in a newspaper, if there be one printed in the same county, and if there be none, then in the state paper, for six weeks successively : in which notice, the lands and tenements to be sold, shall be described with common certainty, by setting forth the number of the lots, and the name or number of the township or towns in which they are situated ; if the premises cannot be so described, they shall be described in some other appropriate manner, and in all cases the improvements thereon, if any, shall be stated.

Such sales shall be in the county where the premises are situated, at public vendue, between the hours of nine in the morning, and the setting of the sun of the same day.

The executors or administrators making the sale, and the guardians of any minor heirs of the deceased, shall not directly or indirectly purchase, or be interested in the purchase of any part of the real estate so sold. All sales made contrary to the provisions above stated, shall be void ; but this section shall

not prohibit any such purchase by a guardian for the benefit of his ward.

On such sales, the executors or administrators may give such length of credit, not exceeding three years, for not more than three-fourths of the purchase money, as shall seem best calculated to produce the highest price, and shall have been directed, or shall be approved, by the surrogate; and shall secure the monies for which credit is given, by a bond of the purchaser, and by a mortgage of the premises sold.

Such conveyances shall thereupon be executed to the purchaser, by the executors or administrators, or by the person so appointed by the surrogate to make the sale. They shall contain and set forth at large the original order authorising a sale, and the order confirming the same, and directing the conveyance; and they shall be deemed to convey all the estate, right and interest in the premises, of the testator or intestate, at the time of his death, free and discharged from all claim for dower, of the widow of such testator or intestate.

Every sale and conveyance made pursuant to the foregoing provisions, shall be subject to all charges by judgment, mortgage or otherwise, upon the lands so sold, existing at the time of the death of the testator or intestate.

Where any real estate or any interest therein, is given or devised by any will legally executed, to the executors therein named, or any of them, to be sold by them or any of them, or where such estate is ordered by any last will to be sold by the executors, and any executor shall neglect or refuse to take upon him the execution of such will, then all sales made by the executor or executors, who shall take upon them the execution of such will, shall be equally valid, as if the other executors had joined in such sale.

Sales of real estate by any executor, made for the payment of debts and legacies, in pursuance of an authority given by any last will, shall be made after like notice, and be conducted in the same manner, as herein before prescribed, in relation to sales by order of any surrogate.

Any executor or administrator, or other person, appointed

as herein directed, who shall fraudulently sell any real estate of his testator or intestate, contrary to the foregoing provisions, shall forfeit double the value of the land sold, to be recovered by the person entitled to an estate of inheritance therein.

No offence, in relation to the giving of notice of sale, or of taking down, or defacing, such notice, shall affect the validity of such sale to any purchaser in good faith, without notice of the irregularity.

Wherever a sale of any real estate has heretofore been made, by virtue of an order of the court of probates, or of any surrogate, and a conveyance executed in pursuance thereof, but without the concurrence of any discreet person besides the executor or administrator, as heretofore required by law, and wherever any conveyance has been executed, or shall be executed in pursuance of such sale, without setting forth at large the order of the surrogate directing such sale, or the order confirming the same, the said irregularities may be rectified, and the sales confirmed, by the chancellor of the state.

Upon any application to the chancellor for confirmation of such sales, he shall direct a reference to a master in chancery, to examine and report, touching the proceedings on such sale, and whether any heirs or devisees of the real estate sold, or persons claiming under them, reside within this state.

Upon the coming in of the master's report, notice shall be published for eight weeks successively in the state paper, of such report being filed, and requiring all persons interested, to appear before the chancellor, at such time and place as he shall have directed, to show cause why such sale and conveyance should not be confirmed.

If it appears by the master's report, that any heirs or devisees of the real estate sold, or any person claiming under them, reside within this state, then a copy of such notice shall be served on such heirs or devisees, or persons claiming under them, either personally or by leaving the same at their usual dwelling place, in case of their absence, at least fourteen days before the time appointed for such hearing.

If, upon the hearing of such application, and the examination of the proceedings, it shall appear to the satisfaction of the chancellor, that the said sale was made fairly, and in good faith, he shall make such order for confirming the sale and conveyance, as he shall deem equitable, and such sale and conveyance shall from that time, be confirmed and valid, according to the terms of the order.

In cases where only a portion of the land, under contract, is sold under the order of a surrogate, the executor or administrator shall execute a conveyance therefor to the purchaser, which will transfer to him all the rights of the deceased to the portion so sold, and all rights which shall be acquired to such portion, by the executor or administrator, or by the persons entitled to the interests of the deceased in the land sold; at the time of sale, on the perfecting the title to such land, pursuant to the contract.

Upon the payment being made, in full, on a contract for the purchase of land, a portion of which shall have been sold, according to the preceding provisions, the executors or administrators of the deceased, shall have the same right to enforce the performance of the contract, which the deceased would have had, if he had lived; and any deed that shall be executed to them, shall be in trust and for the benefit of the persons entitled to the interest of the deceased, subject to the dower of the widow, if there be any, except for such part of the land so conveyed as shall have been sold to a purchaser according to the preceding provisions; and as to such part, the said deed shall insure to the benefit of the purchaser.

6th. Of the duties of Executors and Administrators in rendering an account, and in making distribution to the next of kin.

An executor or administrator, after the expiration of eighteen months from the time of his appointment, may be required to render an account of his proceedings, by an order of the surrogate, to be granted upon application from some person having a demand against the personal estate of the deceased,

either as creditor, legatee or next of kin, or of some person in behalf of any minor, having such claim, or without such application.

Obedience to such order may be enforced in the manner herein before directed, to compel the return of an inventory ; and in case of disobedience, the same proceedings may be had, to attach the party so disobeying, and to discharge him. And the like revocation of the letters granted to him, may be made, in case of the party's absconding or concealing himself, so that the order cannot be personally served, or of his neglecting to render an account within thirty days after being committed : and new letters shall be granted with the like effect as in those cases.

In rendering such account, every executor or administrator shall produce vouchers for all debts and legacies paid, and for all funeral charges and just and necessary expenses, which vouchers shall be deposited and remain with the surrogate ; and such executor or administrator may be examined on oath touching such payments, and also touching any property or effects of the deceased which have come to his hands, and the disposition thereof.

On the settlement of an account of an executor or administrator, he may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own oath positively to the fact of payment, specifying when and to whom such payment was made, and if such oath be uncontradicted ; but such allowances shall not, in the whole, exceed five hundred dollars, for payments in behalf of any one estate.

The surrogate may make allowance to any executor or administrator, for property of the deceased, perished or lost, without the fault of such executor or administrator.

No profit shall be made by executors or administrators, by the increase, nor shall they sustain any loss, by the decrease, without their fault, of any part of the estate ; but they shall account for such increase, and shall be allowed for such decrease, on the settlement of their accounts.

On the settlement of the account of executors or administrators, the surrogate shall allow to them for their services, over and above their expenses :

1. For receiving and paying out all sums of money not exceeding one thousand dollars, at the rate of five dollars per cent.

2. For receiving and paying any sums exceeding one thousand dollars, and not amounting to five thousand dollars, at the rate of two dollars and fifty cents per cent.

3. For all sums above five thousand dollars, at the rate of one dollar per cent.

And in all cases, such allowance shall be made for their actual and necessary expenses, as shall appear just and reasonable.

Where any provision shall be made by any will, for specific compensation to an executor, the same shall be deemed a full satisfaction for his services, in lieu of the allowance aforesaid, or his share thereof; unless such executor shall, by a written instrument to be filed with the surrogate, renounce all claim to such specific legacy.

If, upon being required by any surrogate to render an account, an executor or administrator desires to have the same finally settled, he may apply to the surrogate for a citation, which such surrogate shall issue, requiring the creditors and next of kin of the deceased, and the legatees, if there be any, to appear before him, on some day therein to be specified, and to attend the settlement of such account.

The citation shall be served personally on all those to whom it shall be directed, living in the county of the surrogate, at least fifteen days before the return thereof; and upon those living out of the county, or who, or whose residence may be unknown, either personally, fifteen day previously, or by publishing the same in a newspaper printed in the county, at least four weeks before the return thereof, and in such newspapers printed in any other counties, where any creditors, or other persons interested in the estate of the deceased, may re-

side, as the surrogate, upon due inquiry into the facts, shall direct.

If there be any such creditors, or other persons interested, residing in any other state of the United States, or in either of the provinces of Canada, the citation shall be published once in each week, for three months, in the state paper, unless such citation be personally served on such creditors, at least forty days before the return thereof; and if there be any such creditors, or other persons interested, residing out of the United States, and out of the provinces of Canada, the citation shall be published as aforesaid, for six months.

Any creditors, legatees, or other persons interested in the estate of the deceased as next of kin or otherwise, may attend the settlement of such account, and contest the same; and they, and the executor or administrator, shall have process, to be issued by such surrogate, to compel the attendance of witnesses.

The hearing of the allegations and proofs of the respective parties, may be adjourned, from time to time, as shall be necessary. And the surrogate may appoint one or more auditors to examine the accounts presented to him, and to report thereon, subject to his confirmation; and may make a reasonable allowance to such auditors, not exceeding two dollars per day, to be paid out of the estate of the deceased.

The final settlement of such account, and the allowance thereof, by the surrogate, or upon appeal, shall be deemed conclusive evidence, against all creditors, legatees, next of kin of the deceased, and all persons in any way interested in the estate, upon whom the said citation shall have been served, either personally or by publication, as herein directed, of the following facts, and no others:

1. That the charges made in such account for monies paid to creditors, to legatees, to the next of kin, and for necessary expenses, are correct.
2. That such executor or administrator has been charged all the interest for monies received by him, and embraced in his account, for which he was legally accountable.

3. That the monies stated in such account, as collected, were all that were collectable, on the debts stated in such account, at the time of the settlement thereof.

4. That the allowances in such account, for the decrease in the value of any assets, and the charges therein for the increase in such value, were correctly made.

The last preceding section shall not extend to any case, where an executor is liable to account to a court of equity, by reason of any trust, expressly created by any last will or testament.

No appeal shall be allowed from the decree of the surrogate, for the final settlement of such account, unless the same shall be entered, within three months, after such decree shall have been recorded.

Whenever the authority of an executor or administrator shall cease, or be revoked or superseded for any reason, he may be cited to account before a surrogate, at the instance of the person succeeding to the administration of the same estate, in like manner, as herein before provided for a creditor.

In every such case the executor or administrator may cite the person succeeding to the administration of the same estate, to attend an account and settlement of his proceedings before the surrogate, by giving such reasonable notice as the surrogate shall direct, and by serving and publishing, in the manner herein before provided, a citation to creditors and others; and such settlement and account shall have the like effect, in all respects, as in the case of a settlement at the instance of a creditor.

An executor or administrator, after the expiration of eighteen months from the granting of letters testamentary or of administration, may render a final account of all his proceedings to the surrogate who appointed him, although not cited to do so, and may obtain a citation to all persons interested in the estate, to attend a final settlement of his accounts; which citation shall be served and published in the manner heretofore prescribed, and thereupon the same proceedings shall be had for a final settlement, and with the like effect, in

all respects, as in the case of a settlement at the instance of a creditor.

If it shall appear to the surrogate, that any part of the estate remains to be paid or distributed, he shall make a decree for the payment and distribution of what shall so remain, to and among the creditors, legatees, widow, and next of kin to the deceased, according to their respective rights; and in such decree shall settle and determine all questions concerning any debt, claim, legacy, bequest, or distributive share; to whom the same shall be payable; and the sum to be paid to each person.

In such order the surrogate may, upon the consent in writing of the parties who shall have appeared, direct the delivery of any personal property, which shall not have been sold, and the assignment of any mortgages, bonds, notes, or other demands, not yet due, among those entitled to payment or distribution, in lieu of so much money, as such property or securities may be worth, to be ascertained by the appraisement and oath of such persons, as the surrogate shall appoint for that purpose.

Every person to whom any such securities may be assigned, may sue and recover upon the same, at his own costs and charges, in the name of the executor or administrator making such assignment, or otherwise, in the same manner as such executor or administrator might have done.

If, upon the representation of an executor or administrator, or otherwise, it shall appear to the surrogate, that any claim exists against the estate of the deceased, which is not then due, or upon which a suit is then pending, he shall allow a sufficient sum to satisfy such claim, or the proportion to which it may be entitled, to be retained for the purpose of being applied to the payment of such claim, when due, or when recovered, or of being distributed according to law. The sum so retained, may be left in the hands of the executor or administrator, or may be directed by the surrogate to be deposited in some safe bank, to be drawn only on the order of the surrogate.

Where the deceased shall have died intestate, the surplus of his personal estate remaining after payment of debts ; and where the deceased left a will, the surplus remaining after the payment of debts and legacies, if not bequeathed, shall be distributed to the widow, children, or next of kin of the deceased, in manner following :

1. One third part thereof to the widow, and all the residue by equal portions among the children, and such persons as legally represent such children, if any of them shall have died before the deceased.

2. If there be no children, nor any legal representatives of them, then one moiety of the whole surplus shall be allotted to the widow, and the other moiety shall be distributed to the next of kin of the deceased, entitled under the following provisions.

3. If the deceased leave a widow, and no descendant, parent, brother or sister, nephew or niece, the widow shall be entitled to the whole surplus ; but if there be a brother or sister, nephew or niece, and no descendant or parent, the widow shall be entitled to a moiety of the surplus as above provided, and to the whole of the residue where it does not exceed two thousand dollars : if the residue exceed that sum, she shall receive, in addition to her moiety, two thousand dollars ; and the remainder shall be distributed to the brothers and sisters, and their representatives.

4. If there be no widow, then the whole surplus shall be distributed equally to and among the children, and such as legally represent them.

5. In case there be no widow, and no children, and no representatives of a child, then the whole surplus shall be distributed to the next of kin, in equal degree to the deceased, and their legal representatives.

6. If the deceased shall leave no children, and no representatives of them, and no father, and shall leave a widow and a mother, the moiety not distributed to the widow shall be distributed in equal shares to his mother, and brothers and sisters, or the representatives of such brothers and sis-

ters; and if there be no widow, the whole surplus shall be distributed in like manner to the mother, and to the brothers and sisters, or the representatives of such brothers and sisters.

7. If the deceased leave a father, and no child or descendant, the father shall take a moiety, if there be a widow, and the whole, if there be no widow.

8. If the deceased leave a mother, and no child, descendant, father, brother, sister, or representatives of a brother or sister, the mother, if there be a widow, shall take a moiety, and the whole, if there be no widow.

9. Where the descendants or next of kin of the deceased, entitled to share in his estate, shall be all in equal degree to the deceased, their shares shall be equal.

10. When such descendants, or next of kin, shall be of unequal degrees of kindred, the surplus shall be apportioned among those entitled thereto, according to their respective stocks; so that those, who take in their own right, shall receive equal shares, and those who take by representation, shall receive the share to which the parent whom they represent, if living, would have been entitled.

11. No representation shall be admitted among collaterals, after brothers' and sisters' children.

12. Relatives of the half blood, shall take equally with those of the whole blood in the same degree; and the representatives of such relatives, shall take in the same manner as the representatives of the whole blood.

13. Descendants, and next of kin of the deceased, begotten before his death, but born thereafter, shall take in the same manner, as if they had been born in the life time of the deceased, and had survived him.

If any child of such deceased person shall have been advanced by the deceased, by settlement or portion of real or personal estate, the value thereof shall be reckoned with that part of the surplus of the personal estate, which shall remain to be distributed among the children; and if such advancement be equal or superior to the amount, which, according to

the preceding rules, would be distributed to such child, as his share of such surplus and advancement, then such child and his descendants shall be excluded from any share in the distribution of such surplus.

But if such advancement be not equal to such amount, such child, or his descendants, shall be entitled to receive so much only, as shall be sufficient to make all the shares of all the children, in such surplus and advancement, to be equal, as near as can be estimated.

The maintaining or educating, or the giving of money to a child, without a view to a portion or settlement in life, shall not be deemed an advancement, within the meaning of the two last sections; nor shall those sections apply in any case, where there shall be any real estate of the intestate, to descend to his heirs.

The preceding provisions respecting the distribution of estates, shall not apply to the personal estates of married women; but their husbands may demand, recover, and enjoy the same, as they are entitled by the rules of the common law.

Where a distributive share is to be paid to a minor, the surrogate may direct the same to be paid to the general guardian of such minor, and to be applied to his support and education; or he may direct the same to be invested in permanent securities, as herein before provided, in respect to legacies to minors, with the like authority to apply the interest, and subject to the same obligations.

When administration is granted to any person not the widow of, or next of kin to, a deceased person, and no one shall appear to claim the personal estate of the deceased, within two years after such letters granted, the surplus of such estate, which would be distributed as aforesaid, shall be paid into the treasury of this state, for the benefit of those who may thereafter appear to be entitled to the same.

Any person entitled to any legacy, or to a distributive share of the estate of a deceased person, at any time previous to the expiration of one year from the granting of letters

testamentary or of administration, may apply to the surrogate, either in person or by his guardian, after giving reasonable notice to the executor or administrator, to be allowed to receive such portion of such legacy or share, as may be necessary for his support.

If it appear to the surrogate, that there is at least one third more, of assets, in the hands of such executor or administrator, than will be sufficient to pay all debts, legacies, and claims against the estate, then known, he may, in his discretion, allow such portion of the legacy or distributive share to be advanced, as may be necessary for the support of the person entitled thereto, upon satisfactory bond being executed, for the return of such portion, with interest, whenever required.

The foregoing provisions shall not be applicable to any letters testamentary or of administration, granted to the public administrator in the city of New-York, nor in any respect to the said public administrator.

OF PUBLIC ADMINISTRATORS.



The county treasurer in each of the counties of this state, shall, by virtue of his office, have authority to collect and take charge of the assets of every person dying intestate, where such assets shall amount to one hundred dollars or more, either in his county or out of it, upon which no letters of administration shall have been granted, in the following cases:

1. Whenever such person shall die, leaving assets in the county of such treasurer, and there shall be no widow or relative in the county, entitled, or competent, to take letters of administration on such estate.

2. Whenever assets of any person so dying intestate, shall, after his death, come into the county of such treasurer, and there shall be no person entitled or competent as aforesaid to take administration of such estate. But in the county of Richmond, the county treasurer shall not have power to act as public administrator, in those cases in which the public administrator in the city of New-York has jurisdiction

In the above cases, intestacy shall be presumed, until a will shall be proved, and letters testamentary issued thereon.

For the purpose of collecting and preserving the said assets, he may maintain suits in his name of office, and without any other authority, in the same manner as any executor may by law.

Although there may be a widow or relative of any such intestate, entitled to administration on his estate, in the county, yet, if due proof be made to the surrogate of the county, that there are creditors, or relatives of the deceased, residing more than one hundred miles distant from the residence of such surrogate, who are interested in the distribution of the estate,

and that the effects of the deceased are in danger of waste or embezzlement, he may grant an order to the treasurer of the county, authorising him to seize and secure the said effects, or any part thereof; which order shall vest in him, all the powers given in the foregoing provisions.

If any of the effects whereof the county treasurer is authorised to take charge, shall be concealed or withheld, he shall be entitled to the same process from the surrogate or first judge of the county, to discover and seize the same, on the same evidence and on the like terms, as the public administrator in the city of New-York.

Any property that may be in a perishing condition, taken into the charge of such treasurer, may be sold by him at auction, on obtaining an order for that purpose from the surrogate of the county; which shall be granted, on due proof of the fact, and shall specify the time and manner, and the notice of such sale.

Upon taking charge of the property of any intestate, the county treasurer shall cause the same to be appraised by two disinterested appraisers, to be appointed by the surrogate as in other cases.

The said appraisers shall make a just and true inventory of such property, and of the true value of each article; duplicates of which inventory shall be subscribed by them, and verified by their affidavits. They shall be allowed the same compensation, as appraisers.

Within ten days after taking charge of any property, as herein authorised; the county treasurer shall return an inventory thereof, signed and verified by the appraisers, to the surrogate of the county, to be by him filed; and shall accompany the same with his affidavit, that the same contains a true and just account of all the effects of the deceased, which have come to his hands or knowledge.

The time for making such return, may, on good cause shown, be extended by the surrogate ten days longer. Any county treasurer who shall neglect to make such return with-

in the time above prescribed, or within the time so extended, of all the effects of any deceased person, which shall have come to his hands, shall forfeit five hundred dollars, to be sued for, and recovered, by the county superintendents of the poor, for the use of the poor, and shall forfeit his office.

At the time of making such return, the county treasurer shall give the bond required by law, to be given by any collector of an estate, appointed by a surrogate, with such sureties, and in such penalty, as the surrogate shall approve. The surrogate shall thereupon issue letters to the said county treasurer, authorising him to collect and preserve the estate of the deceased.

Immediately upon the issuing of such letters to collect, the surrogate shall cause notice thereof, to be published once in each week, for three months, in a newspaper printed in his county, and in the state paper, requiring all persons claiming a right to administer on such estate, to appear and interpose such claim before the surrogate, within a certain time therein to be specified, which shall be at least six months after the first publication of such notice in the state paper.

If before the time appointed in such notice, any person so entitled to administration, shall appear and claim the same, the surrogate shall cause ten days notice of such claim, to be served on the collector appointed, and may proceed to grant letters as aforesaid; and thereupon the publication of the notice as above specified, shall be discontinued.

At the time appointed, any person entitled to administration on such estate, and duly qualified and competent, who shall appear and claim the same, shall be entitled to letters testamentary or of administration, as the case may be, as in other cases.

Upon letters testamentary or of administration being so issued, to any person claiming them, all control and authority of the county treasurer, over the estate of the deceased, shall cease, and he shall deliver all the assets in his hands belonging to such estate, to the person so appointed, after

deducting therefrom, the expenses incurred in securing and preserving the said assets, in obtaining letters to collect, and in publishing the notice herein required, and a reasonable compensation for his services, not exceeding three dollars for each day necessarily employed, to be allowed and taxed by the surrogate, on the oath of the collector.

If no executor be allowed, and no letters testamentary or of administration be granted by the surrogate, to any person claiming the same as aforesaid, within the time specified in the notice, then, unless it appear that letters testamentary or of administration have already been granted on such estate, by some other surrogate, the surrogate shall grant letters of administration thereon to the county treasurer, as in other cases, upon receiving the like bond, with the like sureties and in the like penalty, as administrators are required to give.

It shall be the duty of the county treasurer to receive and accept such letters of administration, and to give the bond above required.

Such letters of administration, and the record thereof, and a transcript of such record, duly certified, shall be conclusive evidence of the authority of the county treasurer, in all cases in which the surrogate has jurisdiction.

The surrogate shall immediately transmit to the comptroller, a certified copy of all such letters granted by him to the county treasurer; the expense of which copy shall be paid to him out of the state treasury, on the warrant of the comptroller.

Until letters of administration shall be granted as aforesaid, the county treasurer shall not proceed further in the administration of any estate, than to pay the funeral charges of the deceased, to collect debts, to take possession of, and secure, his effects, to sell such thereof as shall be perishable, and to defray the expenses of the proceedings required by law.

The powers and authority of the county treasurer, in relation to the estate of any deceased person, shall be superseded,

1. By the production of any letters testamentary, that may have been granted before, or that shall be granted subsequent, to his becoming vested with the authority of an administrator, upon the same estate.

2. By the production of any letters of administration, that shall have been granted to any other person, upon the same estate, before the said county treasurer became vested with the powers of an administrator thereon.

3. By the production of any letters of administration, issued by the surrogate of any county in this state, of which the deceased was a resident at the time of his death, granted after the county treasurer may have become vested with the powers of an administrator, upon the estate of such deceased.

On his authority being so superseded, he shall deliver over to the executor or administrator so producing such letters, all the assets of the deceased in his hands, after deducting therefrom the allowance for his services, and the expenses incurred, to be taxed and allowed by the surrogate as aforesaid.

All acts done by such county treasurer, in good faith, previous to such notice, shall be valid; and all suits commenced by him, may be continued by and in the name of the executor or administrator who shall succeed him in the administration of the estate, in relation to which such suit may be brought.

Upon receiving letters of administration, the county treasurer shall be vested with all the powers and rights of other administrators, and shall be subject to the same duties and obligations, except as herein otherwise stated.

Within one year after receiving letters of administration, the person so appointed, shall account on oath to the surrogate of his county, for all assets of such estate received by him, and for the application thereof; and the same proceedings may be had at the instance of any person interested, or of the attorney-general, or the comptroller, to compel such account.

On the settlement of his accounts, he shall be allowed for his expenses as other administrators, and for his services, double the commissions allowed to them by law. The balance of any monies in his hands, shall be paid into the treasury of the state, for the benefit of such persons as shall be entitled to receive the same.

The county treasurer of every county, shall exhibit to the comptroller of the state, at the time of rendering his account of taxes, in each year, a statement, on oath, of all the monies received by him, for commissions, services and expenses, and of the total amount of his receipts and expenditures, in each case in which he shall have taken charge of and collected any effects, or in which he shall have administered on any estate, during the preceding year; with the name of the deceased, his addition, the place of his residence at the time of his death, if the same be known, and the place from which he came, if he was not a resident of this state at the time of his death.

The county treasurer shall cause a copy of every statement made by him, to be published for three weeks, once in each week, in a newspaper printed in his county, and in the state paper; the expense of which, shall be retained by him out of any balance in his hands, payable into the state treasury. For a neglect to comply with this provision, he shall forfeit one hundred dollars, to be recovered by the attorney-general, for the use of the people of this state. The comptroller shall give notice to the attorney-general, of every such omission.

Any person claiming as creditor, legatee or next of kin, any monies that shall have been paid into the state treasury by any county treasurer, may present a petition to the chancellor, praying that such monies may be paid to him; and a copy of such petition shall be served upon the attorney-general, fourteen days previous to the time when the same shall be presented.

The chancellor may make such order as he shall judge expedient, to ascertain the rights of the claimant, either by a

reference to a master, or by awarding an issue, or otherwise; and may grant an order, directing the payment of any monies that shall appear to be due to such claimant, without any interest thereon, and deducting any expenses that may have been incurred on the part of the state, in relation to such balance.

Upon the production of a certified copy of such order, the comptroller shall draw his warrant on the treasury, for the amount therein specified; which shall be paid by the treasurer, to the person entitled thereto.



APPEALS FROM SURROGATE.

Appeals from the decisions of surrogates, by which any will of real estate shall have been admitted to record, or any will of personal estate shall have been admitted to probate; or by which any such will shall be refused to be admitted to record or probate, to the circuit judge of the circuit, shall be made within three months after such decision made and entered, in the manner and with the security specified in the first title, of the sixth chapter, of the second part of the Revised Statutes.

Upon such appeal being perfected, and upon the surrogate being paid the fees allowed by law, for the service herein required, he shall immediately transmit to the circuit judge, a copy of such appeal, and copies of the will, and of all papers, documents and testimony produced before him, in relation to the subject of the appeal, duly certified by him, under his seal of office, with a statement of the decision made by him, and the reasons of such decision, if required.

The circuit judge to whom an appeal shall have been made, upon due proof thereof, and of the unreasonable neglect of a surrogate to transmit the same, with the copies herein directed, after having been paid or tendered his fees, may enforce such return by attachment, in the same manner and with the like effect, as in case of a witness refusing to obey a subpoena to attend any circuit court.

Upon such appeal and copies being received by a circuit judge, he shall appoint a day and place for the hearing of the parties. Such time shall be at least twenty days, and not more than three months, from the time of appointing the same.

Fourteen days notice of the time and place so appointed,

shall be given by the appellant, to the parties who appeared before the surrogate in opposition to such appellant, by serving such notice on them personally, if they can be found; and if they cannot be found, by leaving the same at their places of residence respectively, with some proper person.

At the time and place appointed, and at such other times as the matter shall be adjourned to, the circuit judge shall proceed to hear the allegations of the parties, upon the proofs submitted by them to the surrogate, and shall affirm or reverse the decision of the surrogate, as shall be just.

If the decision be affirmed, the circuit judge shall award costs, to be paid by the party appealing, either personally, or out of the estate of the deceased, as he shall direct. If the decision be reversed, upon a question of law, costs shall in like manner be awarded against the party maintaining the decision of the surrogate, either personally, or out of the estate of the deceased.

Such affirmance, or such reversal upon a question of law, shall be certified to the surrogate whose decision was appealed from, by the circuit judge, with the award of costs made by him, and the copies of papers sent to such judge, shall be by him returned to the surrogate. Such surrogate shall enforce the payment of costs so awarded, in the same manner as if such award had been made by him; and shall proceed upon such affirmance or reversal, as directed in the first title, of the sixth chapter, of the second part of the Revised Statutes, unless such reversal or affirmance be appealed from, according to law.

If the circuit judge shall reverse the decision of the surrogate, upon the question of fact, an issue shall be made up, tried and determined, as prescribed in the said first title, of the said sixth chapter; and upon the final determination thereof being certified to the surrogate whose decision shall have been appealed from, he shall proceed in the manner directed in the said chapter.

For attending, hearing and determining any such appeal, the circuit judge shall be entitled to receive a fee of five dol-

lars from the appellant, to be allowed and recovered as the other costs of the proceedings.

An appeal to the court of chancery may be entered from the decision of any circuit judge, upon such appeal from a surrogate, when no feigned issue shall have been awarded for the trial of any question of fact, within one month from the time any such decision shall have been certified to the surrogate and entered in his office.

Such appeal shall be filed with the surrogate, and shall be accompanied by a bond, in the same penalty and with the same conditions, as prescribed by law, in case of an appeal from the order of a surrogate admitting a will to probate.

Upon such appeal being perfected, the surrogate shall certify and return to the court of chancery, the decision of the circuit judge, and the copies of the will, papers and testimony returned by such judge to the surrogate's office.

The court of chancery may enforce such return, in the same manner as returns to process issued by such court; and upon the same being made, shall proceed thereon, as in cases of appeals from surrogates.

Appeals may be made from the orders, decrees and sentences of surrogates, in all cases, to the court of chancery, except where provision has been made for appeals to circuit judges, and except appeals from orders concerning any admeasurement of dower.

Such appeals from the decree of a surrogate, for the final settlement of the account of any executor, administrator or guardian, shall be made within three months after such decree shall have been recorded.

Such appeals from the order of a surrogate for the appointment of a guardian, or for his removal; or upon a refusal to make such removal, shall be made within six months after such order shall have been entered.

In all other cases not herein before specified, and not otherwise limited by law, appeals from the orders, decrees and sentences of surrogates, to the court of chancery, shall be .

made within thirty days after such order, decree or sentence shall have been made. .

No such appeal to be effectual, until a bond be filed with the surrogate, with two sufficient sureties, to be approved by him, in the penalty of at least one hundred dollars, to the adverse party, conditioned substantially, that the appellant will prosecute his appeal to effect, and will pay all costs which may be adjudged against him by the court of chancery.

Every appeal, when perfected, shall suspend all proceedings on the order appealed from, until such appeal shall be determined, or until the court to which the appeal is made shall authorize proceedings thereon, except in the following cases, to wit :

Appeals from any order appointing a collector, or special administrator ; from any order directing the sale of perishable property ; from orders appointing appraisers ; from any order for the service and publication of notices.

Appeals from orders for the commitment or awarding process for the commitment of any executor, administrator or guardian, for not returning an inventory, rendering an account, or obeying any other order of a surrogate ; and appeals from such orders for the commitment of any person refusing to obey a subpoena, or to testify, when required, according to law, shall not stay the execution of such order or process, unless the party committed, give bond, to be executed, at the time of filing the appeal, by the appellant and two sufficient sureties, to be approved by the surrogate, to the people, in a penalty not to exceed one thousand dollars, conditioned, that if the order appealed from be affirmed, such person will, within twenty days after such affirmance, surrender himself to the custody of the sheriff, to whom he shall have been committed, in obedience to such order or process.

Upon the violation of the condition of such bond, the district attorney of the county, under the direction of the surrogate, is to prosecute the same, in the same manner, and with the like effect as recognizances for the appearance of any party, when they become forfeited.

If it appear to the court in which a recovery on such bond shall be had, that any party has suffered pecuniary injury, by reason of the misconduct of the person so committed, or by reason of the delay caused by such appeal, the court is to order such part of the penalty, as may be deemed reasonable, to be paid to such party, and the surplus, if any, is to be ordered to be paid into the county treasury.

It is to be observed, that appeals from the order of a surrogate, suspending or removing any executor, administrator or guardian, shall not affect any such order, *until the same be reversed.*

In all cases of appeal, the filing such appeal in the office of the surrogate, and perfecting the same, by giving a bond as required by law, is to be deemed sufficient notice of such appeal to the adverse party, without any other notice.

Appeals to the supreme court, from any order of a surrogate, confirming or vacating any admeasurement of dower, shall be made within thirty days, after such order, or decision made, upon giving a bond, as required by law.

The court of chancery is required, by law, to make rules, regulating the proceeding on appeals.

deducting therefrom, the expenses incurred in securing and preserving the said assets, in obtaining letters to collect, and in publishing the notice herein required, and a reasonable compensation for his services, not exceeding three dollars for each day necessarily employed, to be allowed and taxed by the surrogate, on the oath of the collector.

If no executor be allowed, and no letters testamentary or of administration be granted by the surrogate, to any person claiming the same as aforesaid, within the time specified in the notice, then, unless it appear that letters testamentary or of administration have already been granted on such estate, by some other surrogate, the surrogate shall grant letters of administration thereon to the county treasurer, as in other cases, upon receiving the like bond, with the like sureties and in the like penalty, as administrators are required to give.

It shall be the duty of the county treasurer to receive and accept such letters of administration, and to give the bond above required.

Such letters of administration, and the record thereof, and a transcript of such record, duly certified, shall be conclusive evidence of the authority of the county treasurer, in all cases in which the surrogate has jurisdiction.

The surrogate shall immediately transmit to the comptroller, a certified copy of all such letters granted by him to the county treasurer; the expense of which copy shall be paid to him out of the state treasury, on the warrant of the comptroller.

Until letters of administration shall be granted as aforesaid, the county treasurer shall not proceed further in the administration of any estate, than to pay the funeral charges of the deceased, to collect debts, to take possession of, and secure, his effects, to sell such thereof as shall be perishable, and to defray the expenses of the proceedings required by law.

The powers and authority of the county treasurer, in relation to the estate of any deceased person, shall be superseded,

1. By the production of any letters testamentary, that may have been granted before, or that shall be granted subsequent, to his becoming vested with the authority of an administrator, upon the same estate.

2. By the production of any letters of administration, that shall have been granted to any other person, upon the same estate, before the said county treasurer became vested with the powers of an administrator thereon.

3. By the production of any letters of administration, issued by the surrogate of any county in this state, of which the deceased was a resident at the time of his death, granted after the county treasurer may have become vested with the powers of an administrator, upon the estate of such deceased.

On his authority being so superseded, he shall deliver over to the executor or administrator so producing such letters, all the assets of the deceased in his hands, after deducting therefrom the allowance for his services, and the expenses incurred, to be taxed and allowed by the surrogate as aforesaid.

All acts done by such county treasurer, in good faith, previous to such notice, shall be valid; and all suits commenced by him, may be continued by and in the name of the executor or administrator who shall succeed him in the administration of the estate, in relation to which such suit may be brought.

Upon receiving letters of administration, the county treasurer shall be vested with all the powers and rights of other administrators, and shall be subject to the same duties and obligations, except as herein otherwise stated.

Within one year after receiving letters of administration, the person so appointed, shall account on oath to the surrogate of his county, for all assets of such estate received by him, and for the application thereof; and the same proceedings may be had at the instance of any person interested, or of the attorney-general, or the comptroller, to compel such account.

funeral charges. The monies so retained shall be accounted for, and paid by him, into the treasury of the city of New-York. He shall be allowed and paid quarterly, such salary for his services, as the common council of the city shall prescribe, not less than one thousand two hundred and fifty dollars annually.

In the right of his office, he shall have authority to collect and take charge of the goods, chattels, personal estate, and debts, of persons dying intestate, and for that purpose, to maintain suits as public administrator, as any executor might by law, in the following cases:

1. Whenever any person shall die intestate, either within this state or out of it, leaving any goods, chattels, or effects within the city and county of New-York.

2. Whenever any goods, chattels, or effects of any person who shall have died intestate, shall arrive within the said city and county, after his death.

3. Whenever any person, coming from any place out of this state in a vessel bound to the port of New-York, and arriving at the quarantine, near the city of New-York, shall there die intestate, and shall leave any effects either at the said quarantine or in the city of New-York, or elsewhere.

4. Whenever any effects of any such person so arriving and dying intestate at the said quarantine, shall, after his death, arrive either at the said quarantine or within the city of New-York.

5. Whenever any person, coming from any place out of this state in a vessel bound to the port of New-York, shall die intestate on his passage, and any of his effects shall arrive at the said quarantine.

In all the preceding cases, intestacy shall be presumed until a will shall be proved; and letters testamentary be granted thereon.

Whenever there shall be any widow, or next of kin of any such intestate, entitled to a distributive share in his estate, residing in the city of New-York at the time of his death, the public administrator, upon receiving notice of such fact,

shall not have any authority to interfere with the effects of the deceased, until he shall have obtained an order from the surrogate of the city and county of New-York to take charge thereof.

Such order may be granted by the surrogate, upon the application of the public administrator, and upon due proof being made to him by affidavit, that the effects of the deceased are in danger of waste or embezzlement, or that for any other reason, it would be for the benefit of the estate to have the same, or any part thereof, seized and secured.

Whenever, in any of the cases in which the public administrator is authorised to take charge of the effects of any intestate, any goods, chattels, credits or effects of the deceased, or of which he had possession at the time of his death, or within twenty days previous thereto, shall not have been delivered to the public administrator, nor accounted for, satisfactorily, by the persons who were about the deceased in his last sickness, or in whose hands the effects of the deceased, or any of them, may be supposed at any time to have fallen, the public administrator may institute an inquiry concerning the same; and upon satisfying the surrogate of the city and county of New-York, by affidavit, that there are reasonable grounds for suspecting that any such effects are concealed or withheld, he shall be entitled to a subpoena to be issued by the surrogate under his seal of office, to such persons as the said public administrator shall designate, requiring them to appear before such surrogate, at the time and place therein to be specified, for the purpose of being examined, touching the estate and effects of the deceased.

If the surrogate be absent from the city of New-York, such application for a subpoena, may be made to the circuit judge of the first circuit, to the first judge of the court of common pleas of the said city and county, or to the mayor or recorder of the said city, either of whom is hereby authorised to issue such subpoena, under his hand and private seal in the same manner as the surrogate.

Such subpoena shall be served in the same manner as in

civil causes, and if any person shall refuse or neglect to obey the same, or shall refuse to answer touching the matters hereinafter specified, he shall be attached and committed to prison, by the said surrogate or other officer so issuing such subpoena, in the same manner as for disobedience of any citation or subpoena, issued by a surrogate in any case within his jurisdiction.

Upon the appearance of any person so subpoenaed before such surrogate or other officer, he shall be sworn, truly to answer all questions concerning the estate and effects of the deceased, and shall be examined fully and at large, by the public administrator, in relation to the said effects.

If upon any inquiry, it shall appear to the officer conducting the same, that any effects of the deceased are concealed or withheld, and the person having the possession of such property, shall not give the security by law required, for the delivery of the same, such officer shall issue his warrant, directed to the sheriff, marshals and constables of the city or county, where such effects may be, commanding them to search for and seize, the said effects, and for that purpose, if necessary, to break open any house in the day time, and to deliver the said property so seized, to the public administrator, which warrant shall be obeyed by the officers to whom the same shall be directed and delivered, in the same manner, as the process of a court of record.

But such warrant shall not be issued to seize any property, if the person in whose possession such property may be, or any one in his behalf, shall execute a bond, with such sureties, and in such penalty as shall be approved by the surrogate, or other officer, acting in his place, to the public administrator in the city of New-York, conditioned that such obligors will account for and pay to the said public administrator, the full value of the property so claimed and withheld, (and which shall be enumerated in the said condition,) whenever it shall be determined in any suit to be brought by the public administrator, that the said property belongs to the estate of any de-

ceased person, which the administrator has, by law, authority to collect and preserve.

Whenever any effects of a deceased person, of which the public administrator is authorised to take charge, shall be at the quarantine at the time of the death of such person, or shall arrive there afterwards, it shall be the duty of the health officer, or his deputy, whichever shall be present, to secure the said effects from waste and embezzlement, and immediately to give information of such effects to the public administrator, to cause an inventory or account thereof to be taken, and to deliver the same to the said public administrator, unless the said property be of such a description as ought not to be removed, or may be ordered to be destroyed under the laws concerning the public health.

If any property taken into the charge of the public administrator, shall be in a perishing condition, he may immediately sell the same at public auction, on obtaining an order for that purpose from the surrogate of New-York, which shall be granted on due proof of the fact.

If the property of any intestate, of which the public administrator is authorised to take charge, shall exceed in value the sum of one hundred dollars, he shall immediately give notice of his intention to apply to the surrogate of New-York, for letters of administration upon the estate of such intestate, specifying the time and place when such application will be made.

Such notice shall be served personally on the widow and the relatives of the intestate entitled to any share in his estate, if there be any to be found in the city of New-York, at least thirty days before the time therein specified. If there be none to be found in the said city, and in all cases where the notice shall not have been personally served, it shall be published at least twice in each week, for four weeks, in some newspaper printed in the city of New-York.

At the time specified in such notice, any person interested in the estate of the deceased, may appear and contest the granting of letters of administration to the public adminis-

trator, and shall be entitled to subpoenas to compel the attendance of witnesses, on such hearing.

If it shall appear that the deceased has left any will of his personal property, by which any executor is appointed who is competent, and qualified according to law to take upon him the execution of such will; or if it shall appear that there is a widow or any relative of the deceased entitled to a share in his estate, willing, competent, and qualified, according to law to take letters of administration, with the will annexed, if there be one, or to take letters of administration if there be no will, then letters testamentary shall be granted to such executor, or letters of administration shall be granted to such widow or relative, as in other cases.

Upon such letters testamentary or letters of administration being granted, all control and authority of the public administrator, over the estate of the deceased, shall cease, and every order that may have been previously granted to him in relation to the estate, shall be revoked.

The expenses incurred by the public administrator, in all necessary measures for securing and guarding the effects of the deceased, from waste and embezzlement, of serving and publishing the notice aforesaid, and of obtaining any necessary order from the surrogate, and of executing such order, shall be taxed and allowed by the surrogate, and may be retained by the public administrator out of any monies or effects of the deceased in his hands, and the residue thereof, shall be delivered by him to the executor or administrator so allowed or appointed, without any abatement or deduction for commissions, or for any other charges than such as shall have been so allowed and taxed.

If there shall be no monies or effects of the deceased in the hands of the public administrator, to pay such expenses, the same, after being allowed and taxed, shall be paid by the executor or administrator so appointed, in preference to all other debts or claims, except funeral charges, and the public administrator may maintain an action therefor in his own name.

If no executor be allowed, and no letters testamentary, or

of administration, be granted by the surrogate, to any other person, at the time specified for hearing the application, or at such other times as shall have been appointed, then, unless it appear that letters testamentary, or of administration, have already been granted on such estate, the surrogate shall grant letters of administration thereon, with the will annexed, or otherwise, as the case may require, to the public administrator; briefly stating that administration of the goods, chattels, credits and effects of the deceased, has been granted to him according to law; which letters, the record thereof, and a transcript of such record, duly certified, shall be conclusive evidence of the authority of the said public administrator, in all cases in which he is authorised by law to act.

If the property of any intestate, of which the public administrator is authorised to take charge, be worth a sum not exceeding one hundred dollars, he shall immediately give notice, briefly stating that the effects of the deceased, naming him, with his addition, in the hands of the public administrator, will be administered and disposed of by him according to law, unless the same be claimed by some lawful executor or administrator of the deceased, by a certain day to be specified in such notice, not less than thirty days from the service, or first publication thereof, as herein directed.

Such notice shall be personally served on the widow, and every relative of the deceased who shall be residing in the city of New-York, if any can be found; and if none be found, and in all cases where such personal service shall not have been made, the notice shall be published once in each week, for four weeks, in a newspaper printed in the city of New-York.

If, at the time appointed in such notice, no claim to the effects of the deceased shall have been made by any lawful executor or administrator, the public administrator shall make and file in the office of the surrogate of the city and county of New-York, an affidavit, stating the value of the property and effects of the deceased, the service and publication of the notice by him, as above directed, and that no claim has

been made according to law, and that he has taken upon himself the administration of the estate of the deceased.

Upon filing such affidavit, the public administrator shall be vested with all the rights and powers, and subject to all the duties of an administrator of the estate of the deceased, in the same manner as if letters of administration had been granted. Such affidavit, and a duly certified copy thereof, shall be presumptive evidence of the facts therein contained, and that administration of the estate of the deceased, has been committed to the public administrator according to law.

Until letters of administration shall be granted to the public administrator, or until an affidavit shall be filed by him as above directed, he shall not proceed in the administration of any estate, further than to pay funeral charges of the deceased, to take possession of, and secure, his effects, as herein before authorised, to sell such of them as shall be perishable, and to defray the expenses of such proceedings, and of serving and publishing notices, and of taking out letters of administration.

Wherever the deceased, of whose estate the public administrator is authorised to take charge, shall be a foreigner, and shall not have become naturalized, or taken any steps for that purpose, it shall be the duty of the public administrator, to serve upon the consul of the nation to which the deceased belonged, if any there be in the city of New-York, the notice of his intention to apply for letters of administration, and of his intention to administer, herein before specified, in the same manner as they are herein directed to be served, upon the widow or relative of the deceased.

If any lawful executor or administrator shall appear to claim the effects of the deceased, at any time before the public administrator becomes vested with the power of administering such effects, he shall, on producing the letters testamentary, or of administration, be entitled to receive the goods and effects of the deceased in the hands of the public administrator, after deducting the charges specified in the

preceding twentieth section, to be allowed and taxed by the surrogate as therein directed.

The powers and authority of the public administrator, in relation to the estate of any deceased person, shall be superseded in the three following cases :

1. Where letters testamentary shall be granted to any executor of a will of any deceased person, either before or after the public administrator shall have taken letters, or become vested with the powers of an administrator upon such estate.

2. Where any letters of administration of such estate shall have been granted to any other person, before the public administrator became vested with the powers of an administrator, upon the same estate.

3. Where letters of administration shall be granted upon such estate, by any surrogate having jurisdiction, at any time within six months after the public administrator became vested with the powers of an administrator upon such estate.

If any relative of the deceased, entitled to administration on his estate, being competent and qualified according to law, shall, within three months after the public administrator has become vested with the powers of an administrator on such estate, apply to the surrogate of New-York for letters of administration, the same shall be granted to him, upon proof to the surrogate that the applicant did not reside in the city of New-York at the time of the death of the intestate ; or that residing in the said city, no notice was served on him as herein required.

Upon notice being given to the public administrator, of the granting such letters testamentary, or letters of administration, in either of the cases aforesaid, by producing to him duly attested copies thereof, his powers and authority in relation to such estate shall cease ; and he shall deliver over to the executor or administrator so appointed, the property, monies and effects in his hands, belonging to the said estate, after deducting his commissions on the monies received by him, at the rate herein before allowed, and the expenses incurred by

him, in the preceding twentieth section specified, to be allowed and taxed as therein directed.

No suit that shall have been commenced by the public administrator, shall abate on account of his authority having ceased for any cause ; but the same may be continued by his successor, or the executor or administrator of the deceased, who shall succeed him in the administration of the estate, in relation to which, such suit shall have been brought.

Whenever the public administrator shall become vested with the right of administering upon any estate as herein provided, he shall possess the following rights and powers, and be subject to the following obligations :

1. He shall have all the rights, powers and authority given by law to any administrator, except so far as the same may be qualified by the succeeding provisions.

2. He may, like any other administrator, sue and be sued ; and he may plead the general issue in any action against him, and give the special matter of his defence, in evidence under that plea.

3. He shall make and return an inventory in all cases, in the same manner and within the same time as is required by law of other administrators ; and the same proceedings may be had to compel such return.

4. He may sell the personal property of the deceased at public auction, after publishing notice thereof three days, daily, in a newspaper in the city of New-York ; but he shall not sell any property exceeding five hundred dollars in value, without having given such notice daily for fourteen days.

5. He shall not sell any public stock, or stock in any incorporated company, unless for the payment of debts, and on the order of the surrogate, to be duly entered in his records.

6. In all cases where the estate of any deceased person in his hands, shall exceed the value of two hundred and fifty dollars, he shall give notice to the creditors of the deceased, to exhibit their claims, by a publication once in each week,

for eight weeks, in a newspaper printed in the said city, and in the state paper.

7. He may, in his discretion, proceed as other administrators are allowed by law, to compel creditors to exhibit their claims, and with the like effect in all respects.

8. He shall adjust and pay all demands against the estate of the deceased, in the same manner as other administrators; and like them, may refer all disputes respecting such demands.

9. One year after he shall have become vested with the right of administering upon any estate, he shall account on oath, to the surrogate of New-York, for all assets of such estate received by him, and for the application thereof; and the same proceedings may be had to compel such account, as are provided by law, in the case of administrators.

10. He may, in his discretion, proceed as other administrators are allowed by law, after the expiration of twelve months, from the time he became vested with the powers of an administrator on any estate, to have a final settlement of his accounts in relation to such estate, and with the like effect.

11. In the settlement of his accounts, he shall not be allowed for any payments made by him, unless in addition to the other vouchers therefor, it shall appear that the same were made on a joint check, signed by himself and the comptroller of the city of New-York, upon the bank in which his deposits are required to be made; excepting that he may be allowed for current expenses authorised by law, not to exceed twenty dollars in any one case.

12. In the settlement of his accounts, he shall not be allowed for any demand which he may have against the estate of the deceased, unless such demand was specified in writing to the surrogate, at the time of applying for letters of administration, or at the time of filing the affidavit herein required to vest him with the rights of an administrator, nor unless it shall appear that he had such demand, or that his responsibility, on which it may be founded, existed, previous

to the death of the person, against whose estate it may be exhibited.

13. He shall pay all legacies and shares of the estate of the deceased, according to the decrees of the surrogate.

14. The balance of any monies remaining in his hands on the adjustment of his accounts, shall be paid into the treasury of the city of New-York; and he shall transfer and deliver to the corporation of the said city, all public stocks, and all stock in any incorporated company, belonging to the estate of the deceased.

The public administrator shall deposit all monies by him collected and received, within two days after the receipt thereof, in such bank as the common council of the said city shall designate, to the joint credit of himself and the comptroller of the city of New-York, excepting so much as may be necessary to pay the current expenses of any proceedings authorised by law, which shall be allowed by the surrogate of New-York, and shall not exceed twenty dollars in any one case.

The monies so deposited, shall be drawn out, only, on the joint check of the public administrator and the said comptroller, in the cases where by law the public administrator is required to pay out monies. The comptroller shall preserve a register of all checks signed by him, as a part of the documents of his office.

The public administrator may, at any time, advance to any relative of the deceased, such portion of the share of any estate to which he may be entitled, not exceeding fifty dollars, as in the opinion of the surrogate, may be necessary for the support of such relative.

The public administrator shall exhibit to the common council of the city of New-York, on the first day of January in each year, or within fourteen days of that day, a statement, on oath, of the monies recived by him for commissions and expenses, and of the total amount of his receipts and expenditures, in each case in which he shall have taken charge of and collected any effects, or in which he shall have ad-

ministered on any estate, during the preceding year, with the name of the deceased, his addition, the place of his residence at the time of his death, if the same be known, and the country or place from which he came, if he was not a resident of this state at the time of his death.

The public administrator shall cause the said statement to be published for three weeks, daily, in a newspaper in the city of New-York, and twice in each week in the state paper; the expense of which, shall be deducted by him from the balance in his hands, payable to the city treasury.

If any public administrator in the city of New-York, shall neglect to render or to publish such statement, as herein before required, he shall forfeit five hundred dollars, to be recovered by the attorney-general, for the use of this state; and on such recovery being had, he shall forfeit his office, and be thereafter incapable of being appointed to the same office.

The mayor, aldermen and commonalty of the city of New-York, shall, in all cases, be responsible for the application of all monies received by the public administrator, according to law, and for the due and faithful execution of all the duties of his office.

The said corporation shall also be answerable for all stock transferred by the public administrator, and the dividends received thereon, and for all monies paid into the city treasury by him, or which ought to be so transferred or paid in, according to law, after deducting therefrom the commissions allowed by law; but not for any interest on such monies, or dividends on stock. All persons who shall be entitled to receive such monies and stock, as creditors, legatees, or relatives of the deceased, and all persons, aggrieved by any unauthorised acts, or omissions, of the public administrator, shall have the same remedies against the said corporation, for the same, as they would have, against any executor.

Whenever the public administrator shall resign, or be removed from his office, he shall immediately deliver over all papers, money and effects, in his hands, to his successor; and

in case of the death of such officer, the persons into whose custody or possession any such papers, money or effects, may come, shall, on demand, deliver the same to the successor duly appointed. Such delivery may, in either case, be enforced in the manner provided in chapter fifth, of the first part of the Revised Statutes, in relation to public officers.

Every person keeping a boarding or lodging house in the city of New-York, shall report in writing, to the public administrator, the name of every transient person who shall die in his house, within twelve hours after such death. Whoever shall neglect to comply with this provision, shall forfeit one hundred dollars, to be sued for, and recovered by, and in the name of the public administrator, the one moiety thereof to his own use, and the other moiety to the use of the corporation of said city.

The public administrator in New-York, shall cause a copy of the last section to be left at every boarding and lodging house in the city of New-York, at least once in each year; and he shall not be entitled to recover of any person the penalty given by the last section, without due proof of the service of a copy of that section, personally, on the defendant, previous to the neglect for which such suit may be brought, and within one year before the commencement of such suit.

JURISDICTION OF THE FIRST JUDGE, AND DISTRICT-ATTORNEY.



No surrogate shall admit to probate any will, or grant letters testamentary or of administration, in any case, or upon any estate, where he shall be interested as next of kin to the deceased, or as a legatee or devisee under such will, or where such surrogate shall be named as executor in such will.

When any surrogate who would otherwise be authorised to act, shall be so precluded from acting, upon a representation and due proof thereof, to the first judge of such county, such judge shall be vested with all the powers and authority of the surrogate, in relation to the proof of any such will, and the granting of letters testamentary or of administration thereon, and the granting of letters of administration, in case of intestacy; and shall retain jurisdiction in such cases, for all the purposes contemplated by this chapter.

When the office of surrogate in any county shall be vacant, the first judge of the county shall act as surrogate, until such vacancy be supplied.

Whenever the first judge of any county shall act as surrogate, pursuant to the foregoing provisions, he shall possess all the powers and authority of a surrogate, in the same manner, and under the same restrictions, as are herein prescribed, in relation to such surrogate; and his orders and decrees, shall in like manner be subject to appeal.

Whenever it becomes necessary for the first judge to use a seal in the execution of any of his duties or powers as surrogate, he shall be authorised to use the seal of the court of common pleas of his county, without any charge therefore.

All papers, vouchers and documents received by him, and which are required to be retained by the surrogate, shall be deposited in the office of the clerk of the county.

Whenever any will, letters testamentary, or of administration, shall be entitled or required by law, to be recorded, by such first judge, acting as surrogate, he shall record the same, in the books kept for that purpose, by the surrogate, in his own hand writing, and shall certify the same under his own hand.

Whenever the surrogate shall be precluded from acting in consequence of being named as executor in any will, or of being interested as legatee, or devisee, or next of kin of the deceased, and the first judge shall be named as executor in such will, with such surrogate, or shall be interested as next of kin to the deceased, or as a legatee or devisee under such will; and when the offices of surrogate and first judge shall both be vacant, the district attorney of the county shall have the same powers as are given by the preceding sections to the first judge, and may proceed in the same manner.

All letters testamentary, letters of administration and letters appointing any collector, shall be issued in the name of the people of this state, and shall be tested in the name of the surrogate, or other officer granting the same, and shall be signed by him, and sealed with the seal of his office, or with the seal of the court of common pleas of such county, when issued by the first judge or district attorney.

The letters testamentary and of administration, and letters appointing a collector, granted by any officer having jurisdiction, shall be conclusive evidence of the authority of the persons to whom the same may be granted, until the same shall be reversed on appeal, or revoked.

The testimony taken by any first judge or district-attorney, shall be filed in the office of the clerk of the county.

FEES OF SURROGATES.



It will be perceived that there is no fee allowed in the following bill for administering an oath; but this omission (perhaps intentional,) is remedied by a general provision, as follows :

To *every officer*—for administering an oath or affirmation, in cases where no fee is specially provided for by law, and certifying the same, when required, twelve and an half cents —pa. 637, vol. 2, of the Revised Laws.

The surrogates fees are, for,

Drawing the proof of a will, letters testamentary thereon, letters of administration, appointment of a guardian, depositions, statements of accounts settled by him, or any other proceeding before him, for which no specific compensation is provided, fifteen cents for every folio : every certificate of the proof of a will, endorsed thereon, including the seal, fifty cents : every other certificate, including the seal, fifty cents : but not to be charged for certifying any paper to be a copy.

For a bond taken from an executor, administrator or guardian, or from any person authorised to sell real estate, or from any person appealing from any order, or in any other case where a bond is required, fifty cents.

For every allowance and appointment of a guardian, one dollar : taking, entering and filing renunciation, in cases where the same may be made by law, twenty-five cents.

A citation or summons to all the parties in the same proceedings, residing in one county, including the seal, seventy-five cents.

A subpoena for all the witnesses in the same proceeding, residing in one county, including the seal, twenty-five cents.

For every copy of a citation or subpoena, furnished by the surrogate, twelve and an half cents.

A warrant of commitment or attachment, including the seal, seventy-five cents.

A discharge of any person committed, including the seal, fifty cents.

For the appointment of appraisers, fifty cents.

For serving notice of any revocation, or other order or proceeding, twenty-five cents.

Filing an inventory, petition or other paper, six cents; but no charge shall be made for filing the vouchers rendered in support of an account.

Recording every will, with the proof thereof, letters testamentary, letters of administration, appointment of a guardian, report of commissioners for the admeasurement of dower, and every other proceeding or order required by law to be recorded, ten cents for every folio.

For the translation of any will, from any other than the English language, ten cents for every folio.

Copies and exemplifications of the probate of a will, letters testamentary or of administration, and of any other proceeding or order had or made before him, and of any papers filed or recorded in his office; transmitted on an appeal, or furnished to any party on his request, six cents for every folio.

Making and entering every order for the sale of real estate, or for confirming such sale, seventy-five cents: and for every other necessary order twenty-five cents.

Hearing and determining, when the proof of a will, or the right to administration is contested, two dollars.

Taking, stating and determining upon an account rendered, or determining and deciding the distribution of personal estate, two dollars for each day necessarily occupied therein.

If the allowance of such account, or the distribution of

such personal estate, be contested, an additional fee of two dollars.

For hearing and determining any objections to the appointment of an executor or administrator, or any application for his removal, or for the removal of any guardian, or any application to annul the probate of a will, two dollars.

For investing for the benefit of any minor, any legacies, or distributive shares of the estate of any deceased person, in the stocks of this state or of the United States, one per cent., for a sum not exceeding two hundred dollars, and for any excess, one quarter of one per cent. : for investing the same on bond and mortgage of real estate, one half of one per cent., for a sum not exceeding two hundred dollars, and one quarter of one per cent., for any excess.

For receiving the interest on such investments, and paying over the same, for the support and education of such minor, one half of one per cent.

For sealing any exemplifications, process or other documents, and for which no provision is herein made, twenty-five cents.

Searching the records in his office, for any one year, twelve and a half cents; and for every other year, six cents.

Appointing a guardian, to defend any infant who shall be a party to any proceeding, twenty-five cents.

Hearing and determining upon the report of commissioners for the admeasurement of dower, two dollars.

For distributing any monies brought into his office on the sale of real estate, the same commission as is allowed by law to executors, on the settlement of their accounts; and no executors or other persons authorised by law to sell any real estate by the order of any surrogate, shall be allowed any commission, for receiving or paying to the surrogate, the proceeds of such sale, but shall be allowed their expenses in conducting such sale, including two dollars for every deed executed by them thereon, and a compensation not exceeding two dollars a day, for the time necessarily occupied in such

sale; but no fee shall be taken by any surrogate, in any case, where it shall appear to him, by the oath of the party applying for letters testamentary or of administration, that the goods, chattels and credits, do not exceed the value of fifty dollars.

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SURROGATE COURTS.

TO BE USED BY THE SURROGATE, ATTORNEY, EXECUTORS, ADMINISTRATORS,
GUARDIANS, AND IN APPLICATION FOR DOWER.



APPENDIX.



FORMS OF THE SURROGATE.



1st. In proceeding to take Proofs of Wills of Real Estate.



Order to appoint Guardians.

At a Surrogate Court, held, &c.

Present—T. A. B., Surrogate.

In the matter of proving the }
will of the real estate of A. B. }
deceased.

It satisfactorily appearing to the court, that L. B., T. B. and S. B. are heirs at law of the said A. B., deceased, and are minors, it is ordered, that C. D., of the town of , in the county aforesaid, be and he hereby is appointed guardian of the said minors respectively, to take care of their interests in the proceedings in this matter.

In testimony whereof, &c.



Subpoena.

The People of the state of New-York, by the grace of God,
free and independent: To

Greeting. We command you, that your personally appear

before our Surrogate, of our county of _____, in our Surrogate court, on the _____ day of _____, at the Surrogate office in _____, to testify all and singular, you and each of you know in relation to the will of the *real estate* of A. B., deceased, which will then and there be offered for proof,* and this you are not to omit under the penalty of the law.

Witness T. A. B., Surrogate of said county, and the seal of our said court, at the _____ of the _____ day of _____ in the year of our Lord one thousand eight hundred and _____
T. A. B.

Clause of duces tecum.—Add, when necessary to be used, after the word “proof”, and before the word “and”, at the asterisk—“and produce at the same time the said will, to our said Surrogate, to be proved”.

—ooo—

Order for Attachment.

At a Surrogate Court held, &c.

Present—_____, Surrogate.

In the matter of proving the }
will of the real estate of A. B., }
deceased.

On reading and filing the affidavit of C. D., and on motion of Mr. G. H., Solicitor for the applicant, it is ordered that an attachment issue in this matter.

—ooo—

Attachment.

The People, &c.

To the Sheriff of _____ county, greeting.

We command you, that you attach _____, so as to have him before us, in our Surrogate court of our county of _____

at the Surrogate office in the of , on Monday the day of , then and there to answer unto us, as well touching the contempt, which he, as is alleged, hath committed against us, as also such other matters as shall then and there be laid to his charge, and further to abide such order as our said Surrogate court shall make in this behalf—and hereof fail not, and bring this writ with you.

Witness, &c.

Endorsement.—"For not producing the will of deceased", or "for refusing to obey subpoena".

—ooo—

Order to discharge if Will is produced after commitment on Attachment.

At a Surrogate court, &c.

In the matter of proving the }
will of the real estate of A. B., }
deceased.

G. H., of the town of , in the county of , who was duly committed to the custody of the Sheriff of county, upon an attachment issued out of, and under the seal of this court, which was tested the day of , and was made returnable the day of , having submitted to comply with the orders of this court, and to obey its precepts, it is ordered, that the said G. H. be, and he hereby is discharged from, the custody of the said Sheriff, any thing in the said attachment to the contrary notwithstanding,

In testimony, &c.

Depositions of Witnesses on proving a Will of Real Estate.

County of }
 Surrogate court. }

In the matter of proving the
 will of the real estate of A. B.,
 deceased. }

G. H., of the of , being first duly sworn, de-
 poseth and saith, that he saw A. B., deceased, subscribe the
 instrument now shown to him this deponent, or *heard him ac-*
knowledge that he subscribed his name thereto, [as the case
 may be,] and which purports to be the last will and testament
 of the said A. B., deceased, bearing date the day of
 , in the year of our Lord one thousand ,
 that he heard the said A. B. declare the same to be his last
 will and testament, and that he, this deponent, did subscribe
 his name as a witness thereto, at the request of the said A.
 B.; and further, that at the time thereof, the said A. B. was
 of sound mind and memory, of full age, and not under any
 restraint, and further this deponent saith not.

Sworn, &c.

G. H.

—ooo—

Certificate to be endorsed on Will after it is proved.

County of }
 Surrogate office. } ss.

Be it remembered, that on this day of , A.
 D. 183 , the within written instrument was duly proved,
 according to law, as and for the last will of the *real estate* of
 A B., deceased, in the Surrogate court of the county of .

Witness my hand and seal of office.

T. A. B., Surrogate.

Exemplification of Record of Will of Real Estate.

County of }
 Surrogate court.

Be it remembered, that there is now remaining in the office of the Surrogate of the county of , a certain record of the last will, and the proof thereof, of A. B. late of the city of *Albany*, deceased, in the words and figures following, to wit: [here take in the whole record, and at the end.] In testimony whereof, &c.



2nd. Of the Proof of Wills of Personal Property.

Citation to attend Probate.

The People, &c.

To C. B., widow, and A. B. and G. B., next of kin of A. B., late of the city of *Albany*, deceased—greeting:

You and each of you are hereby cited and required, personally to be and appear before our Surrogate of our county of , at the Surrogate office in said city, on Monday, the day of , at ten o'clock in the forenoon of that day, to attend to the probate of the last will and testament of the said A. B., deceased, which will then and there be offered for that purpose.

Witness T. A. B., Surrogate of said county, at the city of *Albany*, this day of , A. D. 183

T. A. B.

8

Citation to produce Will.

The People, &c.

To G. H.—greeting :

You are hereby cited and required, personally to produce before our Surrogate of our county of _____, in our Surrogate court, at the Surrogate office in the _____ of _____, on Monday, the _____ day of _____, the last will and testament of A. B., deceased, or show cause why you should not be committed to jail.

Witness T. A. B., Surrogate of said county, at the
of _____, this _____ day of _____, A. D. 183

—ooo—

Order of Commitment for disobeying the preceding Citation.

At a Surrogate court, &c.

In the matter of proving the
last will and testament of A. B.,
deceased. }

On reading and filing the affidavit of L. M. and on motion of Mr. P. S., Solicitor for the applicant, it is ordered, that G. H., of the town of _____, in the county of _____, be and hereby is committed to the jail of the county of _____, until the further order of this court; and the Sheriff of said county is hereby commanded to take and keep the said G. H. in his custody, until he shall be discharged by due course of law.

Witness T. A. B., Surrogate of said county, the day and year first above written.

T. A. B.

Oaths of the Persons who received the Will from the Testator, and of the Person presenting the same for Probate.

County of _____, ss :

T. V., of the town of _____, in said county, being duly sworn, deposeth and saith, that he was present at the execution of the last will and testament of A. B., late of the _____ of _____, in the county of _____, deceased—[or that he has been informed and verily believes, that the said A. B., late of the _____ of _____, in the county of _____, who is now deceased, made his last will and testament in the presence of J. C. and T. G., witnesses to the execution thereof]—that the same was, *as soon as executed*, delivered to this deponent, to be safely kept until after the death of the said A. B., *by the said A. B.*, [or by some other person, (naming him) at the request of the said A. B.] and that the instrument now produced and offered for probate, is the same which was so delivered to this deponent.

Sworn, &c.

T. V.

County of _____, ss :

L. P., of the _____ of _____, in the county of _____, being duly sworn, deposeth and saith, that the instrument now by him presented to the Surrogate court of the county of _____, to be proved, is, as he verily believes, the last will and testament of A. B., late of the _____ of _____, in the county of _____, who is now deceased: that he, this deponent, was present at the execution thereof—[or (as the case may be,) received it from such a person, and all the circumstances attending the delivery and possession thereof].

I hereby certify, that the within written will was duly admitted to probate by me, on this day of 183 , as will more fully appear by the probate thereto annexed.

 , Surrogate.

The forms, proof and probate, of wills of personal property, are the same under the new, as they were under the old law; and it is deemed unnecessary to insert them in this book.

Citation.

To [the executors who have been sworn : the administrators with will annexed : to all legatees in this state : to guardians of minor legatees : to representatives of deceased legatees:]

Witness, &c.

N. B. As many citations as are requisite, will in all cases be issued.

Order to confirm Probate.

At a Surrogate court, &c.

In the matter of the last will
and testament of A. B., de-
ceased. }

A petition having been heretofore presented to this court by G. B., praying a revocation of the probate of the last will aforesaid, and such proceedings had thereon to a final hearing as is required by law ; and after due deliberation, the Surrogate being of opinion* there is no reason why the prayer of the said petition should be granted, doth hereby order and decree, that the said probate made and recorded the day of , be and the same is hereby **CONFIRMED**: and it is further ordered and decreed, that the fees and expenses of the said Surrogate, in this matter, be paid by the said G. B.

In testimony, &c.

—ooo—

Order to revoke Probate.

As last order to the *—that the said instrument, purporting to be the last will and testament of the said A. B., deceased, is invalid, because—[insert the reasons] (or that it is not sufficiently proved, as the case may be)—doth hereby order and decree, that the probate thereof, made and recorded the day of , be, and the same is hereby *annuled* and *revoked*. And it is further ordered and decreed, that the costs of this suit be paid by—[the persons who resisted the revocation, either personally, or out of the estate of the testator, as the equity of the case may, in the judgment of the surrogate, require].

In testimony, &c.

Attachment for not paying Costs.

This process is in the common form of this writ, and is endorsed on the back with the cause for which it issues, viz:—
 “For not paying \$ required by an order of the Surrogate.”

N. B. It may as well be remarked here, that all attachments are to be of one form, such as will be found in this appendix, and ought to be endorsed with the cause of commitment.

—000—

Letters Testamentary.

The People, &c.

To all to whom these presents shall come, or may concern, send greeting.

Know ye, that at the _____ of _____, in the county of _____, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, before T. A. B., Surrogate of our said county, the last will and testament of _____, deceased, (a copy whereof is hereunto annexed) was proved, and is now approved and allowed of by us; and the said deceased having whilst he lived, and at the time of death, goods, chattels or credits, within this state, by means whereof the proving and registering the said will, and granting administration, of all and singular the said goods, chattels and credits, and also the auditing, allowing, and final discharging the account thereof, doth belong unto us: the administration of all and singular the goods, chattels and credits of the said deceased, and any way concerning _____ will, is granted unto _____, in the said will named,

he being first duly sworn, faithfully and honestly to discharge the duties of executor.

In testimony, &c.

—ooo—

Bond to be given by Executors.

Know all men, &c.

That we, _____, are held and firmly bound unto the people of the state of New-York, in the sum of _____, current money of said state, to be paid to the said people: to the which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, and of our independence the _____

The condition of this obligation is such, that if the above bounden _____, executor of the last will and testament of _____, deceased, do and shall faithfully execute the trust reposed in him as such executor, and shall also obey all orders of the Surrogate of the county of _____, touching the administration of the estate of the said _____, deceased, which shall be made in the premises, then, &c.

Sealed and delivered, &c.

(Seals.)

—ooo—

Renunciation.

I, the subscriber, having been nominated in and by the last will and testament of A. B., deceased, one of the executors thereof, which said will is about to be proved before the Sur-

rogate of the county of _____, for divers good causes, do hereby renounce all right and claim to the said executorship, and pray the same may be recorded.

Dated at the _____ of _____, in the county of _____, this day of _____, 183

Signed in presence of

L. P.

J. K.

P. S.

—ooo—

Summons for Executor to renounce.

County of _____ }
Surrogate court. }

You having been appointed executor in and of the last will and testament of A. B., late of the _____ of _____, in the county of _____, deceased, are hereby required and summoned to appear in this court, on Monday, the _____ day of _____, at ten o'clock in the forenoon of that day, to qualify as such executor, or you will be deemed to have renounced your appointment.

To G. H.

T. A. B., Surrogate.

—ooo—

Order upon default of appearing to qualify.

(Caption.)

In the matter of proving the }
last will and testament of A. B., }
deceased.

Summons having on the _____ day of _____, been duly issued out of this court, requiring G. H., executor in the last will and testament of A. B., deceased, which was returnable on the _____ day of _____, and proof of the due service thereof having been made by the affidavit of C. D., which is

filed,* [and (when done) an order having been on the day of last, entered, whereby the time for the said G. H. to appear and renounce was extended until this day,] and the said G. H. having made default in appearing and qualifying, according to the requirements of said summons, [and order], it is hereby declared and decreed, that the said G. H. has renounced his appointment as such executor.

In testimony, &c.

—ooo—

Order to extend the time to qualify recited above.

(Caption.)

(Title.)

[The above order till *]—and reasonable cause having been shown to said court, by affidavits also filed, which prevents the attention of said G. H., according to the requirements of said summons, it is ordered, that the time for the said G. H. to appear and qualify, be, and the same is hereby extended until Monday, the day of next.

—ooo—

Oath of Executor.

I, , having been nominated and appointed executor of the last will and testament of A. B., late of the of , in the county of , deceased, do solemnly swear and declare in the presence of Almighty God, that I will faithfully and honestly discharge the duties of executor of said will.

Sworn, &c.

—ooo—

Complaint having been made to the surrogate, by petition.

the form whereof cannot be given, but will vary according to the causes of complaint—thereupon the surrogate issues :

Citation to supersede.

The People, &c.

To G. H., executor duly qualified of the last will and testament of A. B., deceased.

You are hereby cited and required, personally to be and appear before our Surrogate of our county of _____, at the Surrogate office in the _____ of _____, on Monday, the day of _____ next, at ten o'clock in the forenoon of that day, to show cause why you should not be superseded in your said trust, upon the complaint of _____

Witness, &c.

—o o o—

Order to supersede Letters Testamentary.

(Caption.)

In the matter of the last will
and testament of A. B., deceased. }

G. H., executor of the said last will and testament of A. B., deceased, having neglected to give bond as required by this court—[or having been adjudged by this court legally incompetent to serve as executor of said last will and testament, as the case may require]—it is hereby ordered, that the letters testamentary issued to him, the said G. H., on the day of _____, be, and the same are hereby superseded ; and further, the rights and authority of the said G. H., as executor aforesaid, are hereby declared to have ceased.

In testimony, &c.

C

ing, by law, entitled to the sole administration in this matter,
do hereby request and consent that L. M. and E. F. of
, in the county of , be joined with me, in the letter
of administration to be granted by this court.

Witness.

C. B.

Here follows Renunciation of next of kin, and in case of
default, Citation to compel Renunciation, which will be the
same in form as are in this appendix before given—varying
the description of the persons named in each form.

—ooo—

Appointment of Collector.

Upon a short petition, stating reasonable ground for the in-
terference of the Surrogate, to be determined by him, he will
issue to one or more persons, special letters, as follows:

The People, &c.

To C. D. and E. F., both of the of , in
the county of

Know ye, that being induced by divers good causes and
considerations, as has lately been determined in and by our
Surrogate court of our county of , where matters of
this nature are cognizable, to save from loss and destruction
the personal property and effects of A. B., late of the
of , in the county of , who, it is alleged, has di-
ed intestate, to select some proper person or persons for that
purpose, and reposing special confidence and trust in your
ability and integrity, you are, by these presents, constituted
and appointed collectors of the personal estate and effects
aforesaid: hereby giving you power and authority to collect
the goods, chattels, personal estate and debts of the said A.
B., deceased—to secure the same, and for those purposes to
maintain suits as administrators, and further to sell such of
the said goods as are perishable, under the direction of our

said Surrogate court, after the same shall have been duly appraised according to law, and for no other purpose whatever: hereby requiring you to render an account under oath, whenever ordered by our said court, of all your proceedings, and to obey all orders of our said court in the premises.

Witness T. A. B., Surrogate of, &c.

The collector takes and *subscribes* the usual oath.

—ooo—

Order to compel the Collector to account.

(Caption.)

In the matter of the personal }
estate of A. B., deceased. }

On the representation of (any person, by law, entitled to the account), it appearing that C. D. and E. F., collectors, heretofore appointed in this matter, have neglected to render an account as required by law, it is ordered, that the said C. D. and E. F. render a just, true and perfect account of all their proceedings under the power given them, and recorded the day of , on Monday, the day of , at ten o'clock in the forenoon of that day, or show cause why an attachment should not be issued against them.

In testimony, &c.

—ooo—

Collectors' Bond.

Know all men by these presents, that we are held and firmly bound unto the people of the state of New-York, in the sum of , current money of said state, to be paid to the said people: to the which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, joint-

ly and severally, firmly by these presents. Sealed with our seals, dated the day of , in the year of our Lord one thousand eight hundred and and of our independence the

The condition of this obligation is such, that if the above bounden , collectors of all and singular the goods, chattels and credits of , deceased, do make or cause to be made, a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands, possession or knowledge of the said , and the same so made, do exhibit, or cause to be exhibited, into the office of the Surrogate of the county of , at or before the expiration of three calendar months from the date of the above written obligation, and shall faithfully and truly account for all property, money and things in action, received by him as such collector, whenever required by the said Surrogate, or any other court of competent authority, and will faithfully deliver up the same to the person or persons who shall be appointed executors or administrators of the said A. B., deceased, or to such other person as shall be authorised to receive the same by the said Surrogate, then this obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered }
in presence of }

(Seals.)

—ooo—

Administrators' Bond.

Know all men by these presents, that we are held and firmly bound unto the people of the state of New-York, in the sum of , current money of said state, to be paid to the said people: to the which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with

our seals, dated the day of in the year of our
 Lord one thousand eight hundred and , and
 of our independence the

The condition of this obligation is such, that if the above
 bounden , administrator of all and singu-
 lar the goods and chattels, rights and credits which were of
 , deceased, shall faithfully execute the trust
 reposed in him as such administrator, and also shall obey all
 orders that may from time to time be made by the Surrogate
 of the county of , touching the administration of the
 estate committed to him—then this obligation to be void, oth-
 erwise to remain in full force and virtue.

Sealed and delivered }
 in the presence of }

(Seals.)

—ooo—

*Order to revoke previous Letters, in case new ones are
 granted.*

(Caption.)

In the matter of the personal }
 property of A. B., deceased. }

Letters of administration having been on the day
 of , duly issued on the estate of the said A. B., deceas-
 ed, to C. D., and the last will and testament of the said A. B.
 having been lately discovered, and duly admitted to probate,
 and letters testamentary thereon granted [or of administra-
 tion with the will annexed], it is ordered and decreed, that
 the said letters of administration, granted the day of
 last, be and the same are hereby revoked. And it
 is further ordered, that a copy hereof be immediately served
 on the said C. D.

In testimony, &c.

Petition for appointment of Appraisers.

County of }
 Surrogate court. }
 In the matter of the personal }
 estate of A. B., deceased. }

I, the subscriber, having been duly appointed executor of the last will and testament of A. B., deceased [or administrator or collector of the personal property of A. B., deceased], do hereby request this court to appoint two disinterested appraisers, to estimate and appraise the personal property of the said A. B., deceased.

(Date.)

(Name.)

—ooo—

Order to appoint Appraisers.

(Caption.)

In the matter of the personal }
 property of A. B., deceased. }

Application for that purpose having been duly made to this court, it is ordered, that _____, be and they are hereby severally appointed appraisers, to estimate and appraise the personal property of the said A. B., deceased, as soon as conveniently may be after the service of a copy of this order.

In testimony, &c.

—ooo—

Notice by Executor, Administrator or Collector, to Legatees or next of kin, of the time and place of making appraisal.

To (legatees or next of kin) of A. B., deceased.

You and each of you will please to take notice, that the

subscriber, with the aid of _____, appraisers, duly appointed by the Surrogate of the county of _____, will on the _____ day of _____, at the late dwelling house of the said deceased (or wherever the same is to be done), proceed to make an estimate and appraisement of the personal property and effects of the said deceased.

Signed by the executor, administrator or collector.

—ooo—

Inventory.

A true and perfect inventory of all the goods, chattels and credits of _____, late of the _____ of _____, in the county of _____, deceased, made by _____, of the estate of the said deceased, with the aid and in the presence of _____, they previously having been duly appointed and sworn as appraisers.

Done at the _____ of _____, in the county of _____, this _____ day of _____ 183

—ooo—

County of _____, ss.

We, G. A. and L. M., appraisers, duly appointed by the Surrogate of said county, do severally hereby swear and declare, that we will truly, honestly and impartially appraise the personal property of A. B., late of the county aforesaid, deceased, which shall be for that purpose exhibited to us, to the best of our respective knowledge and ability.

Sworn, &c.

Signed.

—ooo—

The statute, ch. 6, tit. 3, art. 1, sec. 6 till 13 inclusive, is so explicit on the subject of what things must be embraced in the

inventory, that "he who runs can read"; and precludes the necessity of any labored attempt to make an imaginary form.

—ooo—

Oath to be administered on return of Inventory.

County of } ss.
Surrogate court.

C. D., of the estate of A. B., deceased, being duly sworn, deposeth and saith, that the annexed inventory is in all respects just and true, that it contains a true statement of all the personal property of the said A. B., deceased, which has come to the knowledge of this deponent, and particularly of all money, bank bills and other circulating medium belonging to the said A. B., deceased, and of all just claims of the said deceased, against this deponent, according to the best knowledge of this deponent.

Sworn before, &c.

Signed.

—ooo—

Order to extend the time to return Inventory.

(Caption.)

In the matter of the personal }
estate of A. B., deceased. }

C. D., , having this day, by his petition, which is filed, applied to this court for further time to return the inventory of the personal property of said A. B., deceased, and the Surrogate being of opinion that there is reasonable cause to grant the prayer of said petition, it is ordered, that the said C. D. have time until the day of next, at o'clock in the noon of that day, to return such inventory according to law.

}

Dated. _____, Surrogate.
To C. D., _____ of A. B., deceased.

, Surrogate.

~~000~~

Attachment.

"For not returning inventory"—*vide Ante.*

000

Revocation of Letters for neglect to return Inventory.

At a Surrogate court, &c.

}

Summons having been heretofore issued to C. D., of the estate of A. B., deceased,—[which could not be served by reason of the said C. D. having absconded or concealed himself, or attachment having been subsequently issued against the said C. D., upon which he was committed to the custody of the sheriff of the county of _____, on the day of _____ last]—and the said C. D. having neglected to return his inventory of the personal property, according to the requirements of the statute in such case made and provided, it is therefore ordered, and the Surrogate doth hereby order and decree, that the letters of _____ granted to

D

the said C. D, on the day of , be and the same are hereby revoked: and it is further ordered, that all power, authority and control of the said C. D. is hereby superseded.

In testimony, &c.

—ooo—

Discharge of a person committed for not returning Inventory.

At a Surrogate, &c.

In the matter of the personal }
estate of A. B., deceased. }

C. D., of the estate of the said A. B., deceased, having delivered upon oath all the property of the said deceased under his control to G. H., who has been duly authorized by this court to receive the same, as appears by the affidavit of the said C. D., on file in this court, it is ordered, that he, the said C. D. be, and he is hereby discharged from the custody of the Sheriff of the county of , as required by law.

In testimony, &c.

—ooo—

Affidavit of Administrator, of having delivered all property.

County of , ss:

C. D., who is now in the jail of the county of , duly committed by the Surrogate of the said county, for not producing an inventory of the personal property of A. B., deceased, according to law, being duly sworn, saith, that the annexed list contains a true memorandum of all the property of the said A. B., deceased, under the control of this deponent,

and that all the property therein contained is ready to be delivered to _____, who has been authorized to receive the same.

Sworn.

Signed.

I hereby acknowledge to have received from the said C. D., herein above named, the personal property mentioned in the annexed inventory or list. G. H.

—ooo—

Notice to Creditors to exhibit debts.

The creditors of A. B., deceased, will take notice, that it is hereby required of them to present their several claims or demands, with proof thereof, according to law, to the subscriber, at his dwelling house (or other place of business), at or before the _____ day of _____ next, or they will lose the benefit of the statutes in such case made and provided.

Dated.

Signed by *Executor*.

—ooo—

Approval of Referees.

Between L. T., a creditor of }
A. B., deceased, }
and }
C. D. *Executor* of said A. B. }

I approve of the persons designated in the within agreement as referees, to determine the subject in controversy between the said parties. _____, Surrogate.

*Bond by a Legatee, on receiving Legacy before the end of
a year.*

Know all men by these presents that we, (legatee and two surities), are held and firmly bound unto C. D., *Executor* of the estate of A. B., late of _____, in the county of _____, deceased, in the sum of (double the amount of legacy) : to the which payment well and truly to be made, we and each of us, bind ourselves and our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.— Sealed with our seals, and dated the _____ day of _____ in the year _____

Whereas the above bounden (legatee), is entitled in and by the last will and testament of the said A. B., deceased, to a legacy or bequest of (amount of legacy), and which said legacy has been this day paid to him by the said (the obligee)—now, therefore, the condition of this obligation is such, that if any debts against the said (testator), shall duly appear, and which there shall be no other assets to pay, other legacies, or not sufficient, then the above bounden (legatee), shall refund said sum of \$ (the legacy paid), or such rateable proportions thereof, with the other legatees in said will named, as may be necessary for the payment of the said debts, and the proportional parts of such other legacies, if there be any, and the costs and charges incurred by reason of the payment of the said sum of \$ (the legacy), to the above bounden (legatee), and further, that if the probate of the will of the said A. B., deceased, shall be revoked, or the said will declared void, that then the said above bounden (legatee), shall refund the whole of the said sum of \$ (the legacy), with interest, to the said C. D., *executor*, as aforesaid, or to any other person or persons by law entitled to the same, then this obligation to be void, or else to remain in full force and virtue.

Sealed and delivered }
in presence of }

Seals.

Petition for payment of Legacy, (after a year).

To the Surrogate of the county of
The petition of _____ of the _____ of _____ in
the county of _____

Repectfully sheweth :

That your petitioner is entitled by the will of A. B.,
late of the county of _____, deceased, to a specific legacy of
\$ _____ (or to a legacy of \$ _____), that C. D. is the execu-
tor of said will, and has neglected (or refused upon demand),
to pay to your petitioner his said legacy, as by law he is re-
quired to do.

Your petitioner therefore prays, that such proceedings as
the law requires may be had before the Surrogate, as shall
compel the payment of such legacy.

Sworn, &c.

Signed.

—ooo—

Summons to compel payment of Legacy.

County of _____ }
Surrogate court. }

In the matter of the personal }
estate of A. B., deceased. }

You are hereby summoned and required to appear be-
fore the subscriber, in the Surrogate court of the county of
_____, to be held on Monday, the _____ day of _____ next,
then and there to pay to _____, a legatee of, and un-
der the will of the said A. B., deceased, the amount of his
legacy, or such part thereof as shall be required of you, or
show cause why an attachment should not issue against you.

Dated.

_____, Surrogate.

To C. D. Executor, &c.

Attachment.

“For not paying legacy”—*vide Ante.*

If not obeyed—revoke letters as in cases of inventory—*quid vide.*

—ooo—

Order to prosecute Bond, (when necessary).

(Caption.)

In the matter of the personal }
estate of A. B., deceased. }

C. D., *executor* of the estate of the said A. B., deceased, having neglected to pay as required by the orders and process of this court, according to law, *a legacy due to* , (or any other legal cause), it is now ordered and decreed, that the bond of the said C. D., and his sureties, filed the day of , be and the same is hereby directed to be prosecuted as by law directed.

—ooo—

Bond by Guardian to Minor on receiving Legacy.

Know all men by these presents, that we, (the guardian and his surety), are held and firmly bound unto (the minor), his executors and administrators, in the sum of (double the amount of the legacy): to the which payment we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated the day of , in the the year of our Lord one thousand eight hundred and

The condition of this obligation is such, that if the above bounden (the guardian), shall faithfully apply the sum of (the

legacy), to, and for the use and benefit of (the minor), and shall duly account for the same, before any court having cognizance of such matters, when thereunto legally required, then this obligation to be void, or else to remain in full force and virtue.

Sealed and delivered.

Seals.

—ooo—

Petition for an account, by Creditor, Legatee, or other person having a claim.

This petition will state particularly the nature of the claim, that eighteen months have expired since letters were granted, and the neglect of the executor or administrator to render an account of his proceedings and will conclude with prayer for such account.

—ooo—

Order upon such Petition, or ex officio.

(Caption.)

In the matter of the personal }
estate of A. B., deceased. }

On reading and filing the petition of (creditor or legatee, &c.), praying an account of the proceedings of C. D., executor, of the estate of the said A. B., deceased, (or if done without petition, C. D., executor, &c., having neglected to render an account of his proceedings in this matter), it is ordered that he, the said C. D., produce to this court, on Monday, the day of next, at ten o'clock in the forenoon of that day, a just, true and perfect account of his administration of the personal estate of the said A. B., deceased, or show cause why an attachment should not issue against him.

*Citation to Creditors, next of kin and Legatees, to attend
settlement of the account.*

The People, &c.

To _____, greeting :

You and each of you are hereby cited to be and appear before our Surrogate of our county of _____, at the Surrogate office in the _____ of _____, on Monday, the _____ day of _____, to attend the final settlement of the account of C. D., *executor* of the estate of A. B., deceased, which will then and there be presented, and to abide by, and perform such decree as shall be by our said Surrogate made in the premises.

Witness, &c.

—ooo—

Appointment of Auditors.

(Caption.)

In the matter of the personal }
estate of A. B., deceased. }

C. D., *executor* of the estate of the said A. B., deceased, having presented an account of his proceedings as such *executor*, as required by law, and the proofs and allegations of the several parties interested therein, having been taken and heard, for greater security, it is ordered, that the said account, and the vouchers in support thereof, and the proofs aforesaid, be and the same are hereby referred to G. T. and L. M., auditors for that purpose appointed, to examine the same, and report thereon to this court with all convenient speed, whether in their opinion, the charges made by the said C. D., *executor*, as aforesaid, in such account, for monies paid to creditors and to legatees (or next of kin), and for necessary expenses, are correct—and whether the said C. D. has been charged all the interest for monies received by him, and embraced in his account, for which he is legally accountable—and

whether the monies stated in such account, as collected, were all that were collectable, on the debts stated in such account, at the time of the settlement thereof—and whether the allowances in such account, for the decrease in the value of the assets therein mentioned, and the charges therein for the increase in such value, are correctly made: and it is further ordered, that the said auditors, and any of the parties may, from time to time, apply to this court for further directions.

In testimony, &c.

—ooo—

Decree upon final settlement of Account.

This decree must necessarily be regulated by the nature of the account, and as it is presumed every surrogate will draw such an one as the circumstances of the case may require, I do not deem it proper to say more here, than that it ought to be entitled, in the matter of the personal estate of A. B., deceased, and ought to recite as concisely as possible the proceedings had in the cause, and declare what are proper charges, and what proper discharges, and what sums (if any), are to be paid to creditors, legatees, &c., and decree payment, &c., and direct the assignment of securities for money not yet due, according to their value, as ascertained by the appraisers, for that purpose appointed by the surrogate—and also the allowance of such sum as the surrogate may determine to be necessary to meet any claim which is in suit against the executor—and also direct the deposit of the same in some safe bank, to be drawn only on the order of the surrogate—also payment to guardians of minors, or investment of minors' shares or legacies in stocks or other permanent securities.

E

*Petition of a party for support before the expiration of a
year after Letters granted.*

To _____, Surrogate of
The petition of M. B., of the _____ of _____, in the
county of _____

Respectfully sheweth,

That your petitioner is one of the heirs at law (or legat-
tees), of A. B., late of said place, deceased—that he has been
informed and verily believes there are sufficient assets in the
hands of C. D., *executor*, of the estate of the said A. B., de-
ceased, to authorize the payment of such portion of the share
of the personal property [or of the legacy], to which your
petitioner is entitled, as may be necessary for the support of
your petitioner: and further, that your petitioner is in actual
want of necessary support.

Your petitioner therefore prays that an order may be enter-
ed in your court, to compel the payment by the said C. D.,
to your petitioner, of such sum, at such times and in such
manner, as may by the Surrogate be deemed proper, and he
will ever pray, &c.

Signed.

—ooo—

Notice of application to Executor.

County of _____ }
Surrogate court. }
In the matter of the personal }
estate of A. B., deceased. }

Sir,

Please to take notice, that upon the petition, copy
whereof *you are herewith served*, or is hereunto annexed, I
shall move the Surrogate, at a Surrogate court, to be held in
and for the county of _____, wheresoever the same may be

then held, on Monday, the day of next, at ten o'clock in the forenoon of that day, for such order as may be by said Surrogate deemed proper, in the premises.

Dated.

Signed.

To C. D., *Executor*, &c.

—ooo—

Order to allow Maintenance.

(Caption.)

In the matter of the personal }
estate of A. B., deceased. }

On reading and filing the petition of C. B., praying an allowance out of the funds of the estate of the said deceased, for his support, and also an affidavit of the due service of notice of this application, and it appearing from the accounts of C. D., *executor*, that there is at least one third more of assets in his hands, than will be sufficient to pay all debts, *legacies*, and claims against the estate of said A. B., deceased, at this time known, it is ordered, that the sum of dollars, be immediately paid by the said C. D., to the said C. B., *in part of the legacy*, bequeathed to him in and by the last will of the said A. B., deceased, upon the said C. B. executing a bond, together with L. M. and G. H., to the said C. D., *executor* aforesaid, in the penalty of dollars, conditioned for the return of said sum of dollars, with interest, to the said C. D., when lawfully required so to do.

—ooo—

Bond by Legatee or party in distribution, upon receiving Maintenance.

Know all men, &c.

The condition of this obligation is such, that if the above

bounden C. B., who is a legatee of and under the will of A. B., deceased, [or one of the next of kin, and entitled to a distributive share of the personal property of A. B., deceased], shall well and truly pay to the said (obligee), the just and full sum of dollars, with lawful interest, for the same when thereunto required according to law, then this obligation to be void, or else, &c.

—ooo—

Petition for sale of Real Estate.

To T. A. B., Surrogate of the county of

The petition of C. D., executor of the last will and testament of A. B., deceased, [administrator of the personal property of A. B., deceased,]

Respectfully sheweth,

The whole amount of the personal property of the said A. B., deceased, which has come to the hands of your petitioner to be administered, is the sum of dollars, as will more fully appear by the account audited and allowed by the Surrogate court of the county of on the day of : that your petitioner has applied the same towards the payment of the funeral expenses and debts of the said deceased, in the manner particularly mentioned in the said account, and in the schedule marked A, to this petition annexed, and which he prays may be considered part hereof.

And your petitioner further shews that the whole amount of the debts now outstanding against the estate of the said A. B., deceased, as far as he has been able to discover the same, is the sum of dollars, which will more particularly appear by schedule B., to this petition annexed, and which forms part hereof. That the deficiency is the sum of

dollars, as will appear by the schedules aforesaid.

And your petitioner further shews, that all the real estate of which the said A. B. died seized, consists of the following houses, farms, lots, pieces and parcels of land, to wit: one

dwelling house and lot of ground in the of , in the county of ; situate, lying and being on the corner of Cedar and Main streets, being feet on Cedar and feet on Main-street, bounded as follows: (take in boundaries)—that the said house and lot is worth about the sum of dollars, and was the place of residence of the said A. B., deceased, and is now occupied by his widow and family, (or unoccupied, as the truth may be). Also—(same formalities for all the different parcels of property).

And your petitioner further sheweth, that (in case of a will, C. B., G. B. and L. B. are the only devisees of said A. B., deceased, or in case of intestacy, *the only heirs at law*,) the said C. B. is of the age of *twenty-six* years, G. B. of the age of *nineteen* years the day of last past, and L. B. of the age of *seven* years the day of last past.

Your petitioner therefore prays, that authority may be given to him by the Surrogate, to mortgage, lease or sell so much of the said real estate, as may be deemed necessary to pay the said debts, and he will ever pray, &c.

Signed.

—000—

County of , ss:

On the day of , personally appeared before me, the subscriber, C. D., the above named petitioner, and being duly sworn, deposeth, that the facts in the above petition contained, are true, according to his best information, belief and knowledge.

—000—

Ten days, at least, before presenting the above petition, the executor will cause to be served on the minors and devisees, (if any reside in the county of such surrogate), the following:

Notice to Minors of intention to apply for Guardians.

Surrogate court.

In the matter of the real es- }
tate of A. B., deceased. }

You and each of you will please to take notice, that I intend to apply to the Surrogate of the county of _____, at a Surrogate court to be held before him, at the Surrogate office, in the _____ of _____, on Monday, the _____ day of _____, at ten o'clock in the forenoon of that day, for the appointment of some disinterested freeholder as guardian, to appear for and take care of your interests in the proceeding in this matter.

Dated the _____ day of _____ 183

Signed by *executor*.

To G. B. and L. B., minors.

—ooo—

Order to shew cause.

(As heretofore used.)

—ooo—

Order for feigned Issue.

(Caption.)

(Title.)

This cause having been brought to a hearing, and the Surrogate being of opinion, that the question of fact, whether, &c., cannot be satisfactorily determined without a trial by jury, on motion of Mr. _____, of counsel for _____, it is ordered, that a feigned issue be forthwith made up in this matter, in such form as to present the question aforesaid, and

further, that the same be tried at the next circuit court, to be held in and for the county of

In testimony, &c.

—ooo—

Order for sale of Real Estate.

(Caption.)

(Title of cause.)

On reading and filing affidavits of the due service and publication of the order to show cause, entered in this matter on the day of last past, and upon the examination of all the proceedings in this matter, the Surrogate being satisfied that the requirements of the law have been in all respects complied with, in order to a decree therein; and further, that the debts, for the purpose of satisfying which the application has been made in this matter, are justly due and owing, and that they are not secured by judgment or mortgage upon, or expressly charged on the real estate of the said A. B., deceased, (or if such debts be secured by a mortgage or charge, or a portion of such real estate, then [that the remedies of the creditor, by virtue of such mortgage, or charge, have been exhausted])—and further, that the personal estate of the said deceased is insufficient to pay his debts, and that the whole of such estate, which could have been applied to the payment of the debts of the said deceased, has been fully applied to the same.* And it further satisfactorily appearing to the Surrogate, that the monies required to satisfy the said debts of the said deceased, cannot be raised by mortgage or lease, advantageously to the estate, it is therefore, on motion of , ordered and directed, that C. D. *executor* of the estate of the said A. B., deceased, he having filed the bond required by law, do and shall sell, at public auction, [the whole of (or) that part of] the real estate of the said A. B., deceased, which has been described in the petition presented in this matter, as follows, to wit:—

(take in boundaries and description from the petition).—And it is further ordered, that before any sale be made of said real estate, the said *executor* shall give notice of the time and place of such sale, by posting the same in three of the most public places in the *fourth ward*, (or town of _____,) in the city of _____, (or county of _____,) for six weeks, and shall publish the same in one of the newspapers printed in said city, (or county,) for six successive weeks, at least once in each week. And it is further ordered, that upon such sale or sales, the said *executor* may give such length of credit, not exceeding three years, for not more than three-fourths of the purchase money, as he may deem best calculated to produce the highest price, to be approved by the Surrogate, under his hand, in writing to be endorsed on or annexed to the terms of sale, which are for that purpose to be produced to the said Surrogate, before the said day of sale.

And it is further ordered, that before any conveyances shall be executed of the real estate, or any part thereof, herein directed to be sold, the said *executor* shall make report to the Surrogate of his proceedings upon this order, immediately after such sale or sales, for further directions.

In testimony, &c.

—000—

Order for mortgaging or leasing Real Estate.

(Caption.)

(Title.)

(Take in the order for sale until the asterisk * then)—and it also satisfactorily appearing to the Surrogate, that the monies required to satisfy the said debts of the said deceased, can be raised by mortgage, [or by lease,] advantageously to the estate, it is therefore, on motion of _____, ordered and directed, that C. D., *executor* of the estate of the said A. B., deceased, he having filed the bond required by law, do and shall mortgage, [or lease,] the following lot, piece or

parcel of the real estate of the said A. B., deceased, which has been described in the petition presented in this matter as follows, to wit: (boundaries). And it is further ordered, that the said mortgage shall not be for a less amount than the sum of dollars, &c.

In testimony, &c.

—ooo—

Bond to be given by Executor before order to mortgage or to lease is granted.

Know, &c. (penalty double the amount to be raised—bond to the people.)

The condition of this obligation is such, that if the above bounden C. D., executor of the estate of A. B., deceased, shall faithfully apply the monies which may arise from a mortgage [or lease,] of certain real estates of the said A. B., deceased, which he did by his petition to the Surrogate of the county of , filed in the Surrogate office of said county, the

day of , pray might be ordered to be mortgaged or leased, to the payment of the debts established before the said Surrogate, on granting the order, and for the accounting for such monies, whenever required by such Surrogate, or by any court of competent authority, then this obligation to be void, or else to remain in full force and virtue.

Sealed and delivered }
in presence of }

(Seals.)

—ooo—

Order to appoint a person to sell, after refusal by Executor to execute a bond.

(Caption.)

(Title.)

C. D., executor of the estate of A. B., deceased, having

refused or *neglected* to execute the bond required by law, on motion of Mr. _____, of counsel for the creditors, (or some or one of them), it is ordered, that G. H. (the same as the order for the executor *ante*).

—ooo—

Notice of Sale.

By virtue of a decree of the Surrogate of the county of _____, the subscriber, *executor*, (or being for that purpose duly appointed,) will sell at public auction, on the _____ day of _____ next, at *twelve* o'clock (noon) of that day, at the inn kept by Peter Jones, in the _____ of _____, in the county of _____, all that certain lot (the description must be particular, and in all cases the improvements must be stated).

—ooo—

Terms of Sale.

1st. The property mentioned in the annexed notice of sale, will be put up to auction in *three* several lots, in the order mentioned in said notice.

2nd. The person who bids the highest for any lot shall be declared the purchaser.

3rd. The purchaser shall pay, in cash, within twenty-four hours after the sale, to the Surrogate of the county of _____, one fourth of the amount of his bid, and shall execute his bond for the residue, to be secured by his mortgage on the premises so purchased by him, conditioned to pay the said residue in three equal annual instalments, at the Surrogate office of said county of _____, with lawful interest for the same, or so much thereof, as may from time to time be due and unpaid.

4th. The purchaser may pay as aforesaid, the whole amount of his bid, if he prefer it.

5th. A deed will be made and delivered to the purchaser, whenever he shall have complied with the above terms.

6th. In case of failure on the part of the purchaser to comply with the terms aforesaid, on his part to be fulfilled, the property purchased by him shall be again set up at auction, upon a short notice, at the risk of the first purchaser as to loss, and for the benefit of the estate as to gain.

I, A. B., having purchased the lot first described in the annexed notice of sale, for the sum of _____ dollars, do agree to abide by the above terms.

Dated.

(Signed.)

(A like agreement for each purchaser.)

—ooo—

Report of Sale.

To T. A. B., Surrogate of the county of

In the matter of the real es- }
tate of A. B., deceased. }

I, the subscriber, *executor*, (or having been duly appointed to make sale of the property mentioned in the decree of sale in this matter), do hereby respectfully report :

That in pursuance of a decree of this court, entered in this matter, on the _____ day of _____ last past, I, the subscriber, administrator (or executor) of the estate of the said G. D., deceased, did on the _____ day of _____ last past, cause a notice, of which the annexed schedule A is a copy, to be inserted in one of the public newspapers, printed in the said county of _____, for six successive weeks, as will appear by the affidavit hereunto also annexed, marked schedule B; and did also cause copies of the said notice to be affixed in three of the most public places in the _____ of _____, in the county aforesaid, according to the directions of the sta-

tute in such case made and provided, which also appears by the affidavit marked schedule C, hereto also annexed. That at the time and place of sale mentioned in the said notice, I caused the premises therein mentioned to be exposed to sale, at public auction, under the terms hereunto also annexed, marked schedule D. That all the proceedings of said sale were fairly conducted, and calculated to obtain the best price for said premises. That the said premises were struck off to one _____ of the town of _____, in the said county, for the sum of \$ _____, he being the highest bidder, who has paid into the hands of the subscriber the sum of \$ _____, and has secured the payment of the residue of his purchase money, and is ready and willing to receive a deed, as soon as this court shall confirm said sale, and authorize the subscriber to execute the same.

All which is respectfully submitted.

Signed.

—ooo—

Order to confirm Sale.

(Caption.)

(Title.)

On filing the report of sale in this matter, setting forth the decree of sale made therein, on the _____ day of _____ last past, and the papers thereto annexed, by all which it appears that C. D., *executor* of the estate of said deceased, did, on the _____ day of _____ last past, (after giving due and legal notice thereof, and conforming in all respects to the statute in such case made and provided), sell at public auction, all, &c., and being the real estate directed by said decree to be sold—that L. M. was the highest bidder therefor, and became the purchaser thereof, at the sum of _____ dollars, upon the terms set forth in said report of sale. And it further appearing, from an examination of said proceedings,* that the said sale has been legally made, and all the proceed-

ings legally conducted, and that the sum bid was not disproportionate to the value of the property so sold—it is ordered, on motion of Mr. _____, in behalf of said *executor*, that the said sale be, and the same is hereby confirmed: and it is further ordered, that a conveyance for the said premises be made, and executed in due form of law, to the said L. M., upon his complying with the said terms of sale upon his part to be performed. And it is further ordered, that the monies arising from said sale, *and the securities taken thereon*, (if any), be paid and brought into the office of the Surrogate aforesaid, without delay, to be distributed according to law.

In testimony, &c.

—ooo—

Order to vacate Sale.

(Caption.)

(Title.)

(Take in previous order till *), that the proceedings were unfair, (or that the sum bid is disproportionate to the value of said premises, and that a sum exceeding such bid, at least ten per cent. exclusive of the expenses of a new sale, may be obtained for said premises)—it is therefore ordered and directed, that the said sale be and the same is hereby vacated.—And it is further ordered, that another sale be had, of which due notice shall be given, and the said sale shall be conducted in all respects as directed by law.

In testimony, &c.

—ooo—

Affidavit to vacate Sale.

(Title.)

County of _____

, ss:

G. H., of the _____

of _____

, in said county, being

sworn, deposeth and saith, that he has been informed and verily believes, that the premises lately sold by

, under a decree of the Surrogate of the county of
 , was sold at a price disproportionate to its value, (*or circumstances of fraud, or unfairness, whatever they may be*), and that he, this deponent, is ready and willing, (*or that L. P., who has been examined on this subject, is ready and proposes*) to give the sum of dollars for said premises, which is at least ten per cent. advance upon said sale—and further saith not.

Sworn, &c.

Signed.

—ooo—

Deed of Sale.

THIS INDENTURE made the day of , in the year of our Lord one thousand eight hundred and ,
 BETWEEN, of the first part, and

 of the second part: whereas, at a Surrogate court held for the county of , at the of , in the year , before T. A. B., Surrogate of said county, it was ordered and directed as follows:

(Take in decree of sale, which is already in appendix.)

And whereas, also, at a Surrogate court held as aforesaid, on the day of , in the year aforesaid—it was further ordered as follows, to wit:

(Take in order to confirm sale.)

Now, therefore, this indenture witnesseth, that the said party of the first part, for and in consideration of the premises, and of the sum of dollars to him in hand paid, hath granted, bargained, sold, transferred and assigned, and by these presents doth grant, bargain, sell, transfer and

assign unto the said _____, of the second part,
 all (including the premises decreed to be sold), together with
 all and singular the hereditaments and appurtenances there-
 unto belonging, or in any way appertaining, and the rever-
 sion and reversions, remainder and remainders, rents, issues
 and profits thereof; and also all the estate, right, title, inter-
 est, claim and demand whatsoever, which of right appertain-
 ed to, or were vested in _____, deceased, at the
 time of his death, *free and discharged of all claim for dower*
of _____, widow of said
deceased. To have and to hold to the said _____, of
 the second part, _____ heirs and assigns forever, to the sole
 and only proper use, benefit and behoof of the the said part
 of the second part, _____ heirs and assigns forever.

In witness, &c.

Sealed and delivered.

Seals.

—ooo—

*Consent of Widow to accept a sum of money in lieu of
 Dower.*

Surrogate court.

In the matter of the real es- }
 tate of A. B., deceased. }

I, M. B., widow of the said A. B., being entitled to dow-
 er in certain lands and real estate mentioned and set forth in
 the decree of sale in this matter, made the _____ day of

last past, (or instant), and to which, of record in the of-
 fice of the Surrogate of the county of _____, for great-
 er certainty reference is hereby made, do hereby, in conform-
 ity with the statute in such case made and provided, con-
 sent and agree to accept such sum, in gross, in lieu of said
 dower, as shall be deemed by the said Surrogate, upon the
 principles of law applicable to annuities, a reasonable satis-
 faction for such dower.

Witness my hand and seal, this day of ,
 A. D. 183
 Sealed and delivered }
 in presence of } Signed.—Seal.

—000—

Order to invest the Widow's Dower.

(Caption.)

In the matter of the real es- }
 tate of A. B., deceased. }

M. B., widow of the said A. B., deceased, and entitled to dower in the real estate of the said deceased, having refused to accept a sum in gross in lieu of said dower, it is therefore, in pursuance of the statute in such case made and provided, ordered and directed, that the sum of dollars, (one third of the amount of sales), be invested by the said Surrogate, in some permanent security, on annual interest. And it is further ordered, that the said interest be paid to the said M. B., from time to time, as the same shall be paid into court.

In testimony, &c.

—000—

Notice upon which the preceding Order is founded.

To M. B., widow of A. B., deceased.

Madam,

Please to take notice, that upon a sale recently made, by virtue of an order of the Surrogate of the county of , the sum of dollars was raised, and such proceedings were thereupon had before the said Surrogate, that your claim of dower in the lands of your late husband, sold as aforesaid, has been barred—and unless you agree to accept of a sum in gross in lieu of dower, according to law,

Signed by *Executor*,
(or person authorized to sell.)

Order for Distribution.

(Caption.)

In the matter of the real es- }
tate of A. B., deceased. }

The monies arising from the sale of the real estate of A. B., deceased, amounting to the sum of dollars, having been paid into this court by C. D., *executor* of the estate of said deceased, and on reading and filing affidavit of the due publication of notice of distribution, it is ordered, that the sum of dollars, be paid out of the same, to M. B., widow of said deceased, in lieu of her dower in the estate of said deceased, sold by order of this court, she having consented to accept a sum in gross, according to law, [or that the sum of dollars, having been heretofore invested for said widow, according to law, it is ordered], that the residue of said monies, amounting to the sum of dollars, be paid out and distributed, as follows, to wit: to C. D., *executor* aforesaid, the sum of dollars, for his expenses, duly proved, on said sale; to the Surrogate aforesaid, for his charges, the sum of dollars.— And it appearing, that after the deductions heretofore made, that there remains in court, to be distributed, the sum of dollars: and it further appearing, that the debts of the said A. B., deceased, amount to the sum of dollars, and that the said balance of dollars is sufficient to pay the same, (or that the said balance is insufficient to pay the said debts): and it further appearing, that G. F., L. T. and J. H., are creditors of said deceased—the said G. F. to the amount of dollars: the said L. T. to the

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and sell, or otherwise dispose of the real estate of the said deceased, for the payment of his debts.

In testimony, &c.

—ooo—

Petition by Minor for Guardian.

To the Surrogate of the county of

The petition of A. B.,

Respectfully sheweth:

That your petitioner is of the age of sixteen years; that he is a son (or daughter) of C. B., late of the of , in the county of ; that your petitioner has been informed, and therefore, so states the fact to be, that he is entitled to a considerable real and personal estate, as follows, to wit: (state the nature and value of the property, as nearly as can be ascertained)—that your petitioner is now a resident of the of , in the county of , (the county of the Surrogate to whom petition is presented), and is desirous to have a guardian appointed, to take charge of the person and estate of your petitioner, during his minority.

Your petitioner therefore prays, that L. M., of the of , in the county of , may be appointed such guardian, according to law.

Dated.

(Signed.)

—ooo—

Petition in behalf of a Minor under 14 years of age, for Guardian.

To the Surrogate of the county of

The petition of A. B., mother of M. B., a minor,

Respectfully sheweth:

That the said M. B. is a minor child of your petitioner, and her late husband C. B., deceased; that the said M.

B. is now of the age of four years, three months and six days, and is seized and possessed of, or entitled to the following real or personal estate : (describe the estate particularly)—that the said M. B. is now a resident of the county of (the county of the Surrogate). And your petitioner further sheweth, that on account of the tender age of the said minor, and his inability to protect his own rights, it is necessary and proper that some person be appointed guardian of said minor.

Your petitioner therefore prays, that she, your petitioner, or some discreet and proper person may be appointed guardian of said minor, and she will ever pray, &c.

Dated.

Signed.

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Order for hearing on petition for Guardian.

(Caption.)

In the matter of }
A. B., minor. }

On reading and filing the petition in this matter, it is ordered, that Monday, the day of next, (or instant), be assigned for the hearing of the application. And it is further ordered, that within days, a copy of this order be served on the relatives of said minor, residing in said county of

~~SECRET~~

Bond to Minor.

Know all men by these presents, that we,
 _____, are held and firmly bound unto _____,
 child of _____, in the sum of _____
 dollars, money of account of the United States: to be paid
 to the said _____, or to _____ certain attorney,

heirs, executors, administrators or assigns: to the which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each and every of them jointly and severally, firmly by these presents. Sealed with our seals.—Dated the day of , in the year of our Lord one thousand eight hundred and

The condition of this obligation is such, that if the above bounden , who is this day appointed guardian of the above named , do and shall, well and faithfully, in all things, discharge the duty of guardian to the said , according to the laws of this state, and render a just and true account of all monies and property received by him, and of the application thereof, and of such guardianship in all respects, before any court having cognizance thereof, when thereunto required, then this obligation shall be void, otherwise to remain in full force and virtue.

Sealed and delivered }
in presence of }

(Seals.)

—ooo—

Order to show cause why Bond should not be prosecuted.

(Caption.)

In the matter of }
A. B., a minor. }

On reading and filing the petition and complaint in relation to the acts of the guardian of said minor, it is ordered, that G. H., the guardian aforesaid, be and he is hereby required, personally to be and appear in this court, wherever the same may then be held, on Monday, the day of

next, at the opening of the court on that day, to show cause why the bond given by the said G. H., to the said minor, should not be prosecuted. And further, that a copy of

this order be served on L. S., the surety in said bond named,
 at least days before the said day of next.
 In testimony, &c. •

—000—

Order to prosecute Guardian's Bond.

(Caption.)

In the matter of }
 A. B., a minor. }

This matter coming on to be heard this day, on reading and filing affidavits of the due service of the order to show cause, and on hearing the proofs and allegations of M. B., in behalf of said minor, and of G. H., the guardian, and after due deliberation thereon, [or the said G. H. neglecting to appear], it is ordered, that the said minor have leave to prosecute the bond filed in the Surrogate office of the county afore-said, made and executed by the said G. H., guardian afore-said, together with L. S. his surety, and recover thereon whatsoever, by a court of competent jurisdiction, may be deemed just and lawful.

In testimony, &c.

—000—

Appointment of Guardian to a Minor under 14 years.

The People of the state of New-York, by the Grace of God, free and independent.

To all whom these presents shall come or may concern, greeting: Be it known, that on the day of , appeared before our Surrogate of our county of , in the state of New-York, , of the of , in the county of , who is the of child of , and he, the said , having prayed that may be ap-

pointed guardian of the said , minor and the said , having consented to act as guardian to the said , minor it was by our said Surrogate ordered, that the said , be the guardian to the said , minor upon executing bond to the said , minor in the penal sum therein mentioned: conditioned, that the said , shall in all things discharge the duty of a guardian to the said , minor according to the laws of this state, and render a just and true account thereof, before any court having cognizance thereof, when thereunto required. And the said , having executed such bond this day, with the requisite security, he is therefore, in the name of the people of the state of New-York, and by virtue of the power vested in our said Surrogate, admitted and appointed the guardian of said minor.

In testimony whereof, the said Surrogate hath hereunto set his hand, and affixed the seal of the Surrogate office of the county of , aforesaid, at the of , the day of , in the year of our Lord one thousand eight hundred and , and of our independence the fifty-

—ooo—

Allowance of Guardian to a Minor over 14 years.

The people of the state of New-York, free and independent :

To all to whom these presents shall come or may concern, greeting : Be it known, that on the day of , appeared before our Surrogate of our county of , in the state of New-York, , child of , and he, the said , having chosen , of , in the coun-

ty of _____, to be _____ guardian: and the said _____, being personally present, having consented to act as guardian to the said minor it was by our Surrogate aforesaid, ordered, that the said _____, be the guardian to the said minor upon executing bond to the said minor in the penal sum of _____ dollars, conditioned, that the said _____, shall in all things discharge the duty of a guardian to the said minor according to the laws of this state; and render a just and true account thereof, before any court having cognizance thereof, when thereunto required. And the said _____ having executed such bond this day, with the requisite security, he is therefore, in the name of the people of the state of New-York, and by virtue of the power in our said Surrogate vested, allowed to be the guardian of the said minor.

In testimony whereof, the said Surrogate hath hereunto set his hand, and affixed the seal of the Surrogate office of the county of _____ aforesaid, at the _____ of _____, the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, and of our independence the _____

—ooo—

Petition of Ward for account by Guardian.

To the Surrogate of the county of _____

The petition of A. B., a minor,

Respectfully sheweth:

That on the _____ day of _____, L. M., of the _____ of _____, in the said county, was duly appointed guardian of your petitioner; and your petitioner further sheweth, that the said L. M., immediately thereafter possessed himself, as such guardian, of considerable real and personal estate of _____

your petitioner, and is, and has been wasteful and extravagant of the same, (or some good and sufficient cause).

Your petitioner therefore prays, that the said L. M., may be cited to account according to law, and will ever pray, &c.

Dated.

—ooo—

Petition of Guardian to compel Ward to attend account.

To the Surrogate of the county of

The petition of L. M.,

Respectfully sheweth:

That on the day of , he, your petitioner, was duly appointed guardian of A. B., of said county, a minor, who has now arrived at, and is past the age of twenty-one years, and your petitioner is ready and willing to settle his accounts as such guardian.

Your petitioner therefore prays, that citation be issued by this court, according to law, to said A. B., to attend the settlement of the accounts of your said petitioner.

Dated.

—ooo—

Citation for settlement upon foregoing Petition.

The People of the state of New-York, by the Grace of God, free and independent.

To J— W—, a ward of our Surrogate of our county of , greeting:

Your are hereby cited and required, personally to be and appear before our Surrogate aforesaid, on Monday, the day of , at the opening of the Surrogate court on that day, to be present and attend to the settlement of the

H

accounts of W—— R——, who was, on the day of
 , appointed your guardian, and hereof fail not at your
 peril.

Witness , Surrogate of our
 said county, and the seal of our Surrogate
 office, at the of , in the coun-
 ty of , the day of ,
 A. D. 183

—000—

Decree on Guardian accounts.

(Caption.)

In the matter of J— W—, }
 a minor. }

Proof being made of the due service of the citation in
 this matter, and W. R——, the guardian of said minor, hav-
 ing this day appeared in court, and, under his own oath, sup-
 ported by vouchers, having rendered his guardianship ac-
 count, by which it appears that he has received, in rents and
 profits of land, and from all other sources, the sum of \$

, from the day of his appointment until this day, and that
 he has expended, in and for the maintenance and support of
 the said minor, including the charges and commissions of said
 guardian, the sum of \$, and that there now remains
 in his hands a balance of \$, due to said minor; all
 which will more fully and at large appear, by reference to the
 said account of said guardian, on file and recorded in the
 books of said Surrogate—it is ordered, (if the applicant for
 the account is still a ward, the order will be to invest balance,
 if more than necessary for present use, or if of full age, to pay
 over to the said applicant, and in general other provisions
 will become necessary, as the case may require.)

Form of Appeal.

To the Surrogate of the county of
The petition of A. B.,

Sheweth :

That your petitioner feels himself aggrieved by a decree of said Surrogate, made the day of last, in a matter depending before said Surrogate, entitled "In the matter of J— W—, a minor", and hereby appeals to the Chancellor of the state of New-York.

Your petitioner therefore prays, this may be considered notice of said appeal, and that the Surrogate will prepare the proceedings required by law, to effectuate such appeal, and he will, &c.

—ooo—

Bond on Appeal.

Know all men by these presents, that we W. R—, J— S—, and P— H. S—, all of the
of , in the county of , are held and firmly bound unto , in the sum of one hundred dollars, current money of said state, to be paid to the said
: to the which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated the
day of , in the year of our Lord one thousand eight hundred and , and of our independence the

The condition of this obligation is such, that if the above bounden , who has lately [this day] filed his petition of appeal with the Surrogate of the county of , from a certian order or decree of said Surrogate, made

"In the matter of J— W—, a minor", on the day of , shall prosecute with all speed his said appeal to effect, and shall pay all costs and charges that may be adjudged against him by the court of Chancery of the state of New-York, then this obligation to be void, or else to remain in full force and effect.

Sealed and delivered }
in the presence of } (Seals.)

—ooo—

Bond on an Appeal made by a party from any of the Orders of a Surrogate enumerated in sec. iii, tit. 3, chap. 9, part 3, vol. 2, page 610 of the Revision.

Know all men by these presents, that we, A. B., C. D. and E. F., of, &c. are held and firmly bound unto , in the sum of one thousand dollars, current money of said state, to be paid to the said : to the which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated the day of , in the year of our Lord one thousand eight hundred and , and of our independence the

The condition of this obligation is such, that if the above bounden A. B., who has lately [or this day] appealed from an order [or decree] of the Surrogate of the county of , made the day of , in a certain cause then depending before the said Surrogate, and entitled [as the title may be], shall, in case the said order [or decree] of the said Surrogate shall be affirmed by the Chancellor of the state of New-York, surrender himself to the custody of the Sheriff of , within twenty days after such affirmance, then this obligation to be void, or else, &c.

Sealed and delivered }
in presence of } Seals.

Petition for removal of Guardian.

To the Surrogate of the county of

The petition of [any ward, or any relative in his behalf,
or the surety of a guardian],

Respectfully sheweth :

That on the day of , one W—— R——
was duly appointed guardian of J—— W——, [or your
petitioner] : that having executed the bond required by law,
he, the said W—— R——, entered upon the duties of his
office, and possessed himself of all the estates of the said J——
W——, [or your petitioner]. And your petitioner further
sheweth, [that the guardian is incompetent, or is wasting the
real or personal estate of his said ward, or is guilty of any
misconduct, stating particularly the cause of complaint], all
which your petitioner is ready to verify, as the Surrogate may
direct.

Your petitioner therefore prays citation to said
guardian, to be and appear in this court, to
show cause why he should not be removed
from his said guardianship, according to
law, and he will ever pray, &c.

Dated.

Signed.

—ooo—

County of , ss :

A. B., the petitioner above named, being duly sworn,
saith, that the facts stated in the preceding petition, by him
subscribed, are true, to the best of his knowledge, information
and belief.

Sworn before me this }
day of , 183 }

Signed.

Citation to Guardian to show cause why he should not be removed.

The People of the state of New-York, by the Grace of God, free and independent.

To J— W—, guardian of W— R—, a minor, greeting :

We command you, that you personally be and appear before our Surrogate of our county of , on Monday, the day of next, at a Surrogate court then to be held, at the opening of the court on that day, at the Surrogate office in the of , in the county of , to show cause why you should not be removed from your guardianship of said minor, and hereof fail not at your peril.

Witness T. A. B., Surrogate of said county
and the seal of his office, at the of
, in said county, the day of
, A. D. 183

—ooo—

Order to remove Guardian.

(Caption.)

In the matter of J. W., guar- }
dian of W. R. }

On reading and filing affidavit of the due service of the citation issued and tested in this matter, the day of , and counsel having been heard on the proofs in this matter, after due deliberation, the Surrogate doth order, and it is hereby ordered and decreed, that the said J. W. be, and he hereby is removed from his office of guardian of the said W. R.

In testimony, &c.

Petition by Widow for her Dower.

To the Surrogate of the county of

The petition of C. B., widow of A. B., deceased,

Respectfully sheweth :

That the said A. B., then of the of , in the county of , departed this life, on or about the day of , in the year of our Lord one thousand eight hundred and , leaving your petitioner, his lawful wife, him surviving: that the said A. B. died seized of all that certain lot of land, [describe all the land of which dower is claimed, and the place where situated]. And your petitioner further sheweth, that dower in the said land has never been assigned to her.

Your petitioner therefore prays, that such proceedings may be had, in this court, as will enable her to have her dower assigned, and she will ever, &c.

Dated.

Signed.

—o—o—o—

County of , ss:
(Usual affidavit.)

—o—o—o—

Notice of the application for Dower, to be served with copy of foregoing Petition.

To A. B. and C. D.

You will please to take notice, that a petition, of which the annexed is a copy, will be presented on Monday, the day of next, (at least twenty days before the petition is presented), at the opening of the court on that day, to the Surrogate of the county of , at the Surrogate of-

fice in the of , and a motion will then and there be made, for such order as the said Surrogate shall deem proper to make in the premises.

Dated.

Signed by Widow,
or her Attorney.

—ooo—

Notice to Widow, to demand her Dower.

To C. B., widow of A. B., deceased.

Madam,

You are hereby required to make demand of your dower in the following lands and premises, of which your late husband, A. B., died seized, to wit: (describe lands). And you are hereby also notified, to make such demand, within ninety days after the service of this notice, or I shall proceed to have the same assigned to you according to law.

Yours, &c.

Dated.

Signed.

—ooo—

Petition by Heirs or Owners for Dower, when Widow neglects to make demand.

To the Surrogate of the county of

The petition of G. H., (heir, owner or guardian),

Respectfully sheweth:

That A. B., then of the of , in the county of , died on the day of , leaving certain real estate in the county of (the county of the Surrogate), to wit: (describe estates). And your petitioner further sheweth, that C. B., widow of said deceased, although duly notified so to do, (as will appear by the affidavit and notice accompanying this petition), [or hath neglected, for one year since the death of her said husband, to apply

for her dower], hath, and still doth refuse to apply for her dower in said described lands and premises, as required by law.

Your petitioner therefore prays, that such proceedings may be had in the premises, that the dower aforesaid may be assigned to said C. B., and he will ever pray, &c.

Dated.

Signed.

N. B. 20 days notice of application, to be served with copy of petition.

—ooo—

Order for Admeasurement.

In the matter of dower in the }
lands of A. B., deceased. }

Upon the presentation of the petition in this matter, and on reading and filing affidavit of the due service of a copy of said petition, and of a notice of this application, and after hearing all parties interested in said application, it is ordered and adjudged, that admeasurement be made of the dower of C. B., widow of said A. B., in the following lands and premises, to wit: (description of lands.) And it is further ordered, that A. D., G. T. and V. W., three reputable and disinterested freeholders, be and they hereby are appointed Commissioners, for the purpose of making such admeasurement, who shall make report of their proceedings under this order, to this court, on or before the day of
next.

In testimony, &c.

Order to enlarge the time for Commissioners to report.

(Caption.)

In the matter of dower, in the }
lands of A. B., deceased. }

Upon application of _____, and for good cause shewn, it is ordered, that the time for the commissioners appointed in this matter, to report, be extended until Monday, the _____ day of _____, at the opening of the court on that day.

In testimony, &c.

—ooo—

Order to compel Report.

(Caption.)

In the matter of dower, in the lands }
of A. B., deceased. }

L. M., S. P. and V. W., commissioners heretofore duly appointed having neglected to make report as required by a previous order of this court, on motion of _____, in behalf of _____, it is ordered, that the said commissioners make report according to law, of their proceedings in this matter, on Monday, the _____ day of _____, at the opening of the court on that day, or show cause why an attachment should not issue against them.

In testimony, &c.

—ooo—

Order to change Commissioner.

(Caption.)

In the matter of dower, in the lands }
of A. B., deceased. }

L. M., S. P. and V. W., the commissioners heretofore

appointed in this matter, having neglected to make report, as required by the orders of this court, on motion of Mr.

, in behalf of , it is ordered, that C. D., P. S. and U. T., be and they are hereby appointed commissioners, in the place and stead of the said L. M., S. P. and V. W., who are hereby removed from their said office. And further, the commissioners hereby appointed proceed immediately, after being duly sworn, to make admeasurement of the dower, of C. B., the widow of the said A. B., deceased, of, in and to the following lands and premises, to wit: (description of land and previous order to the end thereof.)

—ooo—

Report of Commissioners.

To the Surrogate of the county of

We, L. M., S. P. and V. W., commissioners duly appointed by this court, on the day of last past, to make admeasurement of the dower of C. B., widow, in the lands and premises of her late husband A. B., deceased, do hereby certify and report, that after having been duly sworn, we proceeded to execute the trust reposed in us, and after examination and survey of the said land and premises, we set off, as and for the dower of the said widow, the following, being part and parcel of said premises, to wit: (a particular description of the dower lands, with courses and distances, &c.) And we do hereby further report, that our charges amount to the sum of dollars, the particular items of which are as follows, to wit: (every charge, item by item.)

All which is respectfully submitted.

Dated.

Signed.

Order to confirm or set aside Report of Commissioners.

(Caption.)

In the matter of dower in the lands }
of A. B., deceased. }

Upon the coming in of the report of L. M., S. P. and V. W., the commissioners appointed to admeasure dower in this matter, and upon hearing the parties in interest in this matter, and after due deliberation, it is ordered, that the said report be and the same is hereby confirmed—[or that the said report be and the same is hereby set aside, and G. T., J. L. and P. O. are hereby duly appointed commissioners to make admeasurement of the dower in this case, pursuant to the former decree in this matter, and are hereby required to make report of their proceedings therein, on Monday, the day of next, at the opening of the court on that day.]

In testimony, &c.

—000—

Appeal from Order of Surrogate.

To the Surrogate of the county of

The petition of C. B.,

Respectfully sheweth:

That your petitioner feels aggrieved by the order of this court, made "In the matter of dower in the lands of A. B., deceased," on the day of , and hereby appeals to the Supreme court of this state, from the said order.

Your petitioner therefore prays, this, his appeal, may be filed, upon his executing the bond required by law.

Dated.

Bond required upon Appeal in Dower.

Know all men by these presents, that we _____, are held and firmly bound unto _____, in the sum of one hundred dollars, current money of said state, to be paid to the said _____ : to the _____ which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, and of our independence the _____

The condition of this obligation is such, that if the above bounden _____, who hath appealed to the Supreme court of Judicature of the state of New-York, from an order made by the Surrogate of the county of _____, on the _____ day of _____, entitled "In the matter of dower in the lands of A. B., deceased," shall diligently prosecute such appeal, and shall pay all costs that may be adjudged by the Supreme court against him, the said _____, then this obligation to be void, &c.

*Endorsement on said Bond:—*I, _____, Surrogate of the county of _____, do hereby approve of the sufficiency of the security in the within bond.

Dated.

—000—

Transcript of the proceedings in Dower before the Surrogate, to be sent up on Appeal.

The People of the state of New-York, by the Grace of God, free and independent.

To all whom these presents may come, greeting:—

Know ye, that among the records remaining in the office of our Surrogate of our county of _____, there is a certain petition, in the words and figures following, to wit :

[Take in the petition.]

And also the following papers and proceedings, to wit :

[Insert here all affidavits, notices, orders, reports, and all other proceedings, together with the appeal, according to their respective dates, entries, &c., and then at the end]—

In testimony whereof, we have caused the seal of office of our said Surrogate, to be hereunto affixed.—Witness T. A. B., Surrogate of the county of _____, at the _____ of _____, the _____ day of _____, in the year, &c.

(Seal.)

T. A. B.

—ooo—

Petition for leave to prove a Will of Real Estate.

To the Surrogate of the county of _____
The petition of L. M.,

Respectfully sheweth :

That your petitioner is the executor named in the last will and testament of A. B., late of the _____ of _____, in the county of _____, deceased—[or is a son and heir, or otherwise, as the truth may be]—and is desirous to have proof thereof taken, as of a will of real estate, according to law. And your petitioner further sheweth, that he has caused notices to be duly served on C. B., M. B. and L. B., the heirs at law of said deceased, as will more fully appear, by affidavits of such service, which your petitioner will pro-

duce to this court, at the time assigned for the hearing of this matter.

Your petitioner therefore prays, that he may be permitted to produce before this court, the subscribing witnesses to said will, and such other necessary proof, as by this court may be deemed proper, and your petitioner will ever pray, &c.

Dated.

Signed.

—ooo—

Notice by Person intending to apply to the Surrogate for proof of a Will of Real Estate.

To A. B.,

You will please to take notice, that I shall, on Monday, the day of , apply to the Surrogate of the county of , wheresoever his court shall then be held, at ten o'clock in the forenoon of that day, to take the proof of, and record the last will and testament of C. B., late of the of , in the county of , deceased; which said will is dated the day of , in the year of our Lord one thousand, &c.

Yours, &c.

Dated.

L. M.

—ooo—

Affidavit of service of Notice to prove a Will of Real Estate.

Surrogate court.

In the matter of proving the last will of A. B., }
deceased. } Real Estate.

J. K., of the of , in the county of

, being duly sworn, deposeth and saith, that he did, on the day of last, serve the notice hereunto annexed, on C. B., one of the persons therein named, by handing to the said C. B., a true copy thereof, And further, that on the same day he served the said notice on G. T., the guardian of L. B., an infant, by handing to the said G. T., a true copy thereof, and further saith not.

Sworn, &c.

J. K.

—ooo—

Petition of the County Treasurer for Letters of Administration.

To the Surrogate of the county of

The petition of J. H. W.,

Respectfully sheweth:

That your petitioner is Treasurer of the county of , duly qualified to act: that A. B., then a resident of the of , in the of , lately, to wit: on the day of , died, *leaving assets in the said county of amounting to one hundred dollars or more,* [or that assets to the amount of \$, have since his death come into the county of aforesaid]. And your petitioner further sheweth, that no letters of administration have been granted of, and upon the estate of the said deceased, as your petitioner believes. And your petitioner further sheweth, that there is no widow nor other relative in the said county, entitled or competent to take letters of administration on the estate of the said deceased.

Your petitioner therefore prays, that letters may be issued to your petitioner, on the estate of the said deceased, according to the statute in such case made and provided, and he will ever pray, &c.

Dated.

Signed

Proof having been made to the surrogate, that there is a widow or relatives of any person dying intestate, in his county, but that there are creditors, or relatives of the deceased, residing more than one hundred miles from the residence of such surrogate, and that the effects of the deceased are in danger of waste or embezzlement, (of the manner and nature of which proof, the surrogate will give his own directions), the surrogate will enter the following

Order directing County Treasurer to seize and secure effects.

At a Surrogate court, held for the county of _____,
at &c. the _____ day of _____, 183

Present—T. A. B., Surrogate.

In the matter of the per-
sonal estate of A. B., de-
ceased. }

On reading and filing the affidavits presented in this matter, and on motion of Mr. _____, it is ordered, that J. H. W., Treasurer of the county of _____ aforesaid, be, and he hereby is, authorised to seize and secure the effects of the said A. B., deceased, within the said county, or elsewhere, or any part thereof, and for that purpose to maintain a suit or suits in his name of office.

In testimony, &c.

—000—

Upon producing to the surrogate, or in his absence, to the first judge, an affidavit, of the concealment or withholding any of the effects of a deceased person from the treasurer of the county, the surrogate will issue the following

K

Subpœna.

The People of the state of New-York, &c.
To A. B., C. D. and L. F., Greeting :

You and each of you, are hereby required, personally to be and appear before our Surrogate of our county of _____, on the _____ day of _____, at _____ o'clock in the noon of that day, for the purpose of being examined as to the estate and effects of J. H., deceased : and hereof fail not under the penalty of the law.

Witness, &c.

—ooo—

Warrant to seize effects.

To the Sheriff, Marshals and Constables of the county of _____

Greeting :

You are hereby commanded to search for and seize all the goods and effects of A. B., deceased, within your bailwick, and for that purpose, to break open any house in the day time, if necessary, and to deliver all such property as you may seize by virtue of this warrant, to J. H. W., Treasurer of the county of _____

Witness my hand and seal of office, at _____, the _____ day of _____ 183
T. A. B., Surrogate
of the county of _____

—ooo—

Bond by person having possession of the property of a deceased person, in order to stay a warrant.

Know all men by these presents, that we, C. D., J. H.

and L. M., are held and firmly bound unto J. H. W., Treasurer of the county of _____, in the sum of _____ dollars, to be paid to the said J. H. W., Treasurer, as aforesaid, and to his successor and successors in office. To the which payment well and truly to be made, we bind ourselves and each of us, and our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed, &c.

Whereas, there is at present in the hands and possession, or under the control of the above bounded C. D., the following articles and property, to wit: (here enumerate all the effects). Which said enumerated property and effects, are claimed by the said Treasurer of the said county of _____, as belonging to the estate of A. B., deceased, and of which the said Treasurer has a right to possession, according to law. Now, therefore, the condition of this obligation is such, that if the above bounden obligors, or one or either of them, shall account for, and pay to the said Treasurer of the county aforesaid, the full value of the said above enumerated articles and property, whenever it shall be determined, in any suit to be brought by the said Treasurer, that the said property belongs to the estate of the said A. B., deceased, which the said Treasurer has, by law, authority to collect, then this obligation to be void, or else to remain in full force and effect.

Sealed and delivered }
in presence of }

Signed, (L. S.)

—ooo—

Order to sell Property which is perishable.

(Caption.)

(Title.)

It appearing by affidavit on file, that certain articles of personal property of A. B., deceased, now in the hands of J. H. W., Treasurer of the county of _____, are of a per-

ishable nature, and that it is necessary that the same be sold, on motion of Mr. _____, it is ordered that the said county Treasurer do sell, at public auction, on the _____ day of _____, next [or instant], all the chattels, property and effects, mentioned and set forth in the schedule annexed to said affidavit, after giving _____ days notice of such sale, to be published in one of the newspapers printed in said county of _____

—ooo—

Letters to collect having been issued to the county treasurer, the surrogate will cause to be published, the following

Notice of the appointment of a Collector.

County of _____ }
 Surrogate office. }

All persons claiming a right to administer upon the estate of A. B., late of, &c., deceased, are hereby notified and required to appear and interpose such claim, before the Surrogate of the county of _____, aforesaid, on or before the _____ day of _____ next, or in default thereof, administration will be granted according to law, to the Treasurer of the county of _____

Dated.

—ooo—

If, at the expiration of the foregoing notice, or before, letters shall be granted to any person entitled thereto, the county treasurer will present to the surrogate the following

Petition for discharge.

To the Surrogate of the county of
 The subscriber, Treasurer of said county,
 Respectfully represents :

That he was on the day of last, appointed to collect the personal property of A. B., deceased; that it will appear by the records of your office, that one C. B., was, on the day of , appointed administrator of the estate of the said A. B., according to law, whereby the authority of the subscriber over the said estate has ceased.

The subscriber is ready and willing to deliver over all the assets of the said deceased in his hands, to the said C. B., after his account shall be settled by the Surrogate. The account is hereunto annexed, and the subscriber solicits a final settlement, at such time as the Surrogate may appoint.

Dated.

(Signed.)

— 000 —

Account of County Treasurer, to accompany his annual return of Taxes to the Comptroller.

To , Comptroller.

The subscriber has the honor, in compliance with the requisites of the act in such case provided, to REPORT, that the amount of all the monies received by him, for commissions, services and expenses, in all the estates of deceased persons upon which he has administered, during the preceding year, is the sum of dollars. And further, that the total amount of his receipts and expenditures have been, during the same period, particularly as follows :

County Treasurer's Return of Deceased Persons' Estates.

<i>Names of the deceased,</i>	<i>The addition of each.</i>	<i>Place of residence, or place whence from at time of death.</i>	<i>Amount received.</i>	<i>Amount of expenditures.</i>	<i>Amount received for commissions, services and expenses.</i>
John Peabody,	Tailor,	Root, Cayuta, Ohio.	\$351 62	\$55 96	\$19 85
James Nixon,	Mariner,	City of Albany, N. Y.	908 14	65 72	26 23

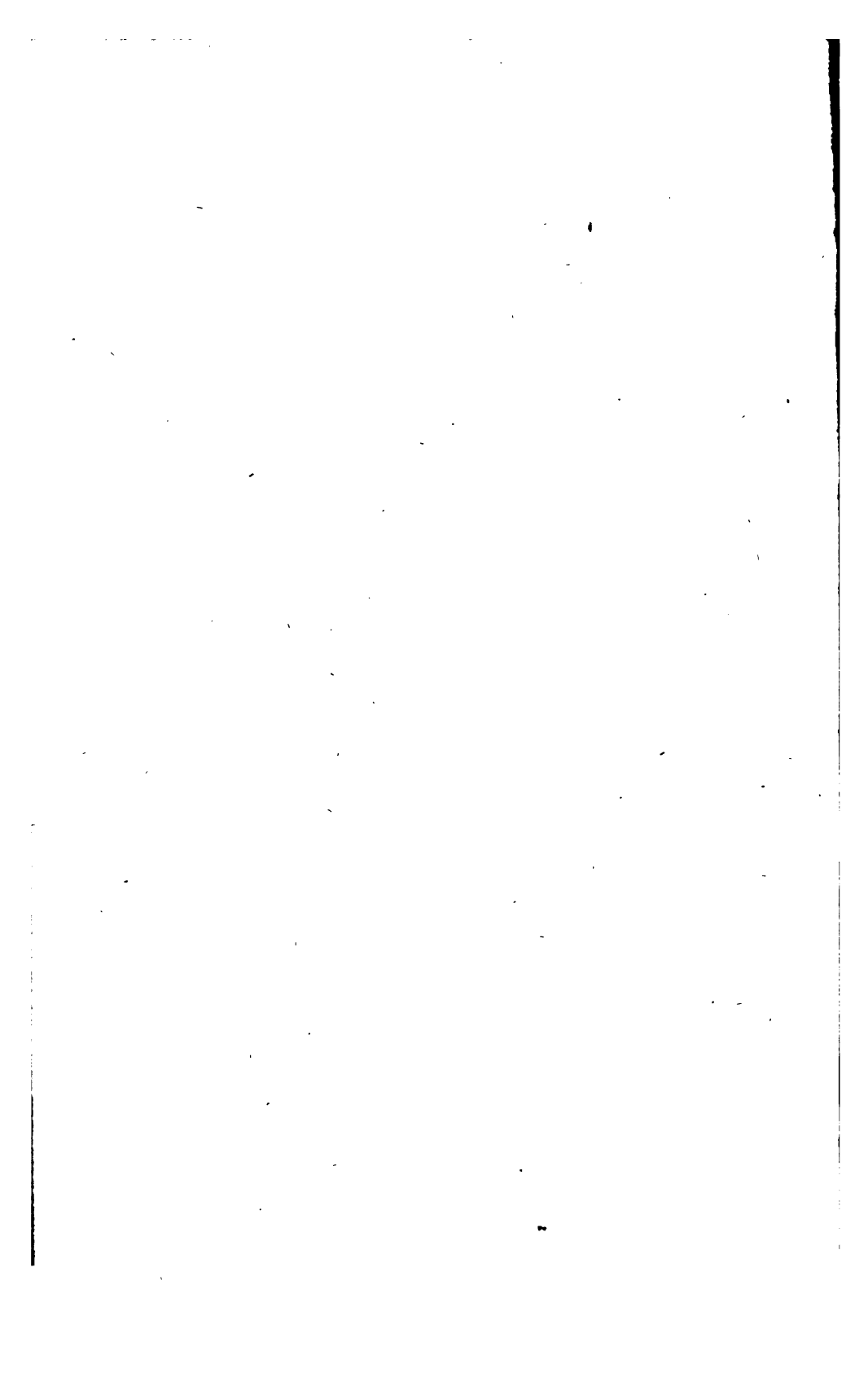
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State of New-York, }
County of ss.

L. H. W., Treasurer of said county, being duly sworn, deposeth and saith, that the *preceding* account is just and true, and further saith not.
Sworn, &c.

L. H. W.

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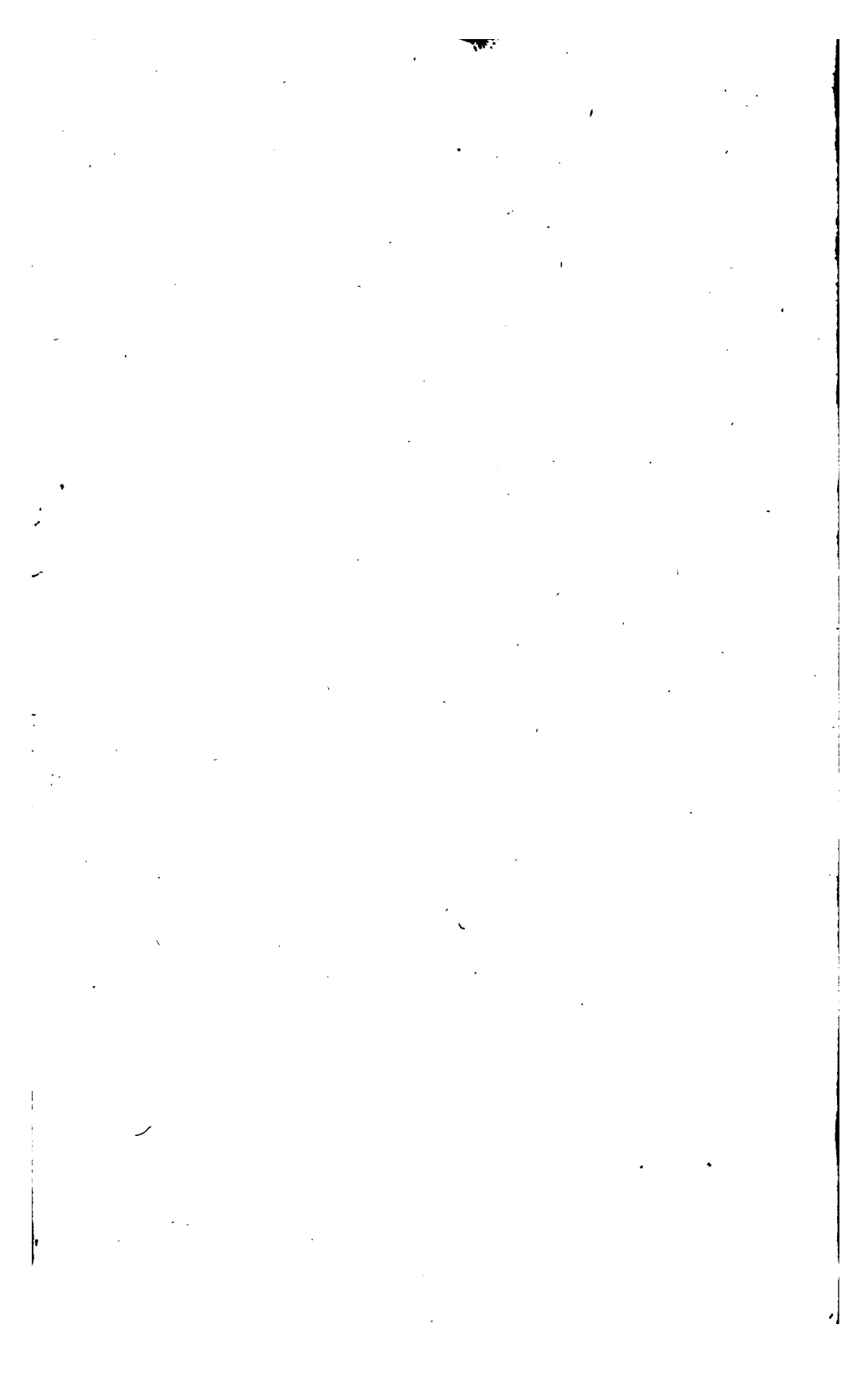
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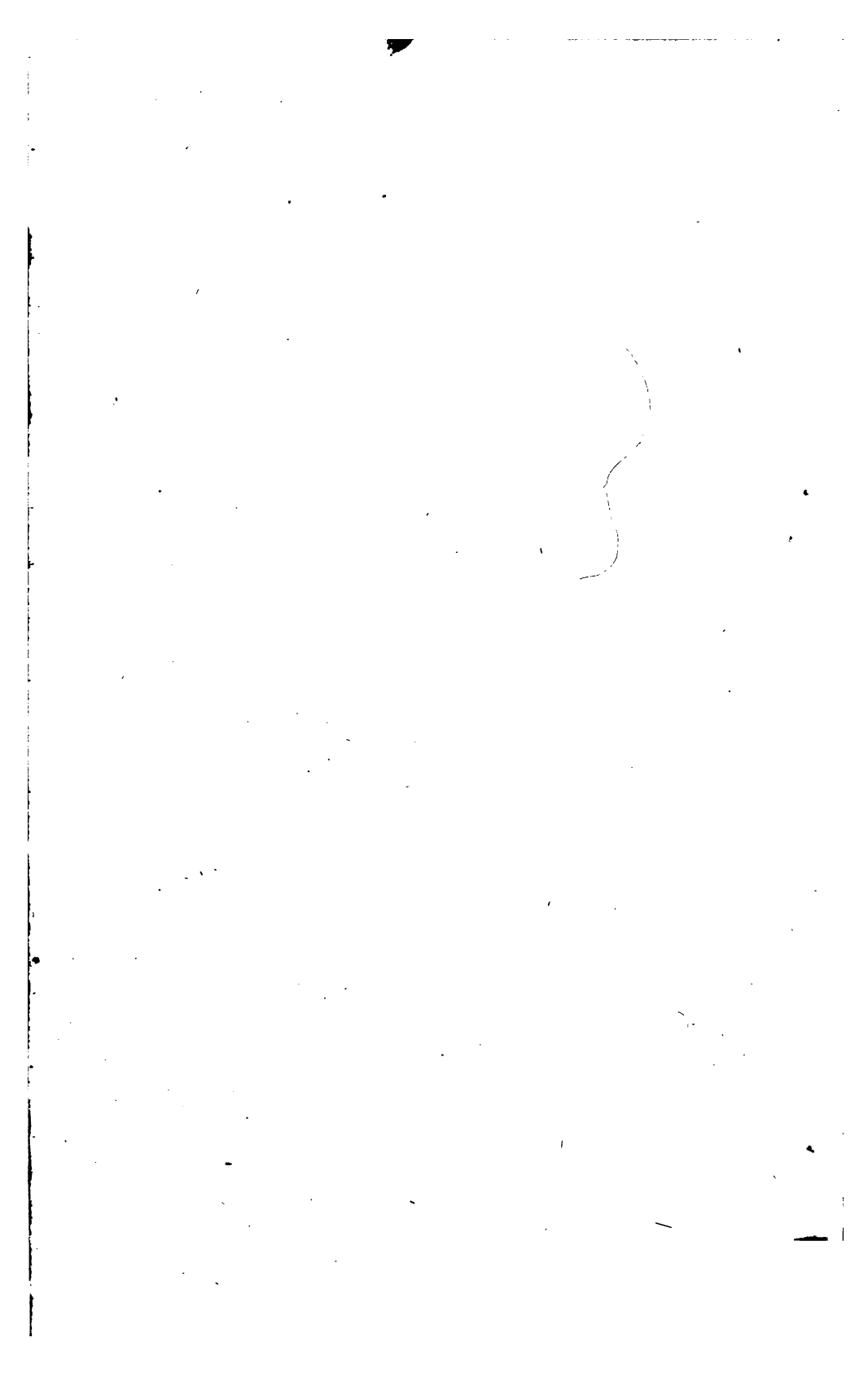
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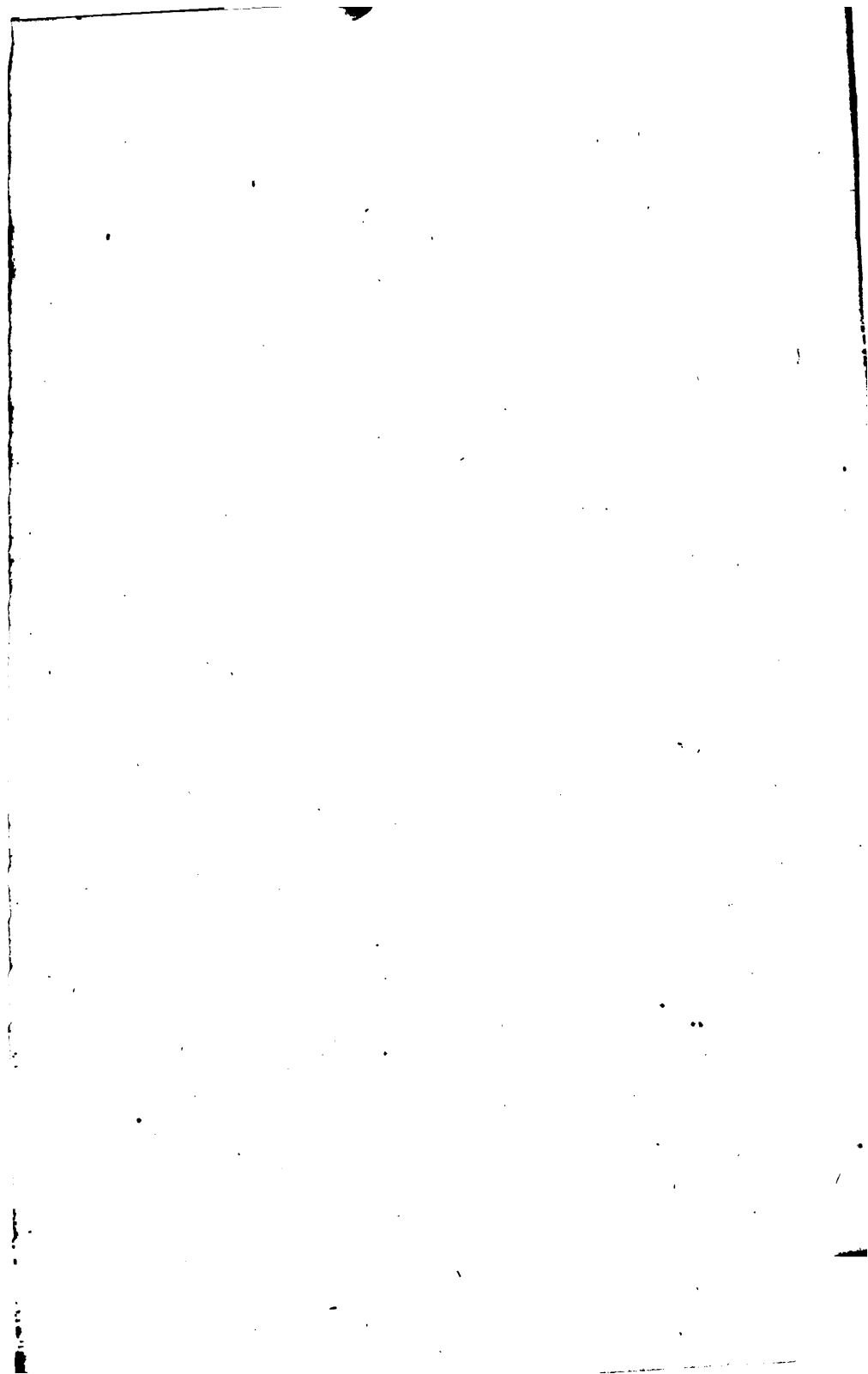
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